













RISE AND PROGRESS  
OF THE  
ENGLISH CONSTITUTION:

THE TREATISE OF

J. L. DE LOLME, LL.D.

WITH AN

HISTORICAL AND LEGAL INTRODUCTION, AND NOTES,

BY

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*BARRISTER-AT-LAW.*

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TO  
THE HONORABLE  
SIR EDWARD HALL ALDERSON, KNIGHT,

ONE OF THE BARONS OF HER MAJESTY'S  
COURT OF EXCHEQUER,  
&c. &c. &c.

THE FOLLOWING PAGES

ARE, BY PERMISSION,  
RESPECTFULLY DEDICATED.



## PREFACE.

THE object of this publication is to afford a Sketch of the Rise and Progress of the English Constitution, by prefixing an Historical Introduction, and affixing Legal Notes to the Constitutional Treatise of De Lolme:—the legislative enactments of the nineteenth century having, in many respects, rendered the text of that author essentially defective and inaccurate.

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The Introduction has been embodied in the First Volume, and extends from the earliest period of authentic history, up to the termination of the reign of William III., and is arranged under seven divisions; viz., the Saxon Period—Norman Era—House of Plantagenet—Line of Lancaster—Line of York—House of Tudor—and House of Stuart.

The motive for terminating the Introduction with the reign of William III., was to avoid controversy with any political party *in esse*,—consequently, allusions to men and measures of the present day are utterly disclaimed.

Under the “Saxon Period,”—Changes effected by the Saxons; Prerogatives of the Saxon Kings; the Witena Gemot; Personal Ranks in Society; Local Divisions of the Country; and the Municipal Police,—have been respectively illustrated.



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Under the "Norman Era," the period from 1066 to 1154, information will be derived, respecting the Maintenance of the Saxon Institutions; Tenure of Lands; Laws of William I.; Administration of Justice; Ecclesiastical Jurisdiction; Domesday; Sac and Soc; and the "Councils."

The Arbitrary Exercise of the Royal Prerogative; Origin and Progress of the Legislative Assemblies; Privileges of Lords and Commons; Prerogative of the Crown to create Peers, and grant the right of Parliamentary Representation; Pecuniary Exactions; Administration of Justice; Improvements in the Laws; Judicial Powers of the Peers; Increased Importance of the Borough Institutions; Constitutions of Clarendon; Antipathies against the Papal Power; Alienation of Lands; and General State of the Country during the Dynasties of Henry II., Richard I., John, Henry III., Edward I., Edward II., Edward III., and Richard II.,—have been detailed under the "House of Plantagenet."

The "Line of Lancaster" extends from 1399 to 1461; and the Title of Henry IV. to the Crown; Prerogative of the Crown to appoint a Regent; Constitutional Rights of the Lords and Commons; Persons to be chosen, and choosers of Knights and Burgesses to serve in Parliament; Rising Importance of the Commons, and Improper Conduct of the Sheriffs in making their Parliamentary Returns; Borough Institutions; Pecuniary Taxation; with the National Dissensions,—have been discussed in this division.

No essential changes having occurred under the "Line of York," it has been deemed expedient to refrain from entering into details during that period of our history.

Prerogative of the Crown; Royal Proclamations; Perfidious and Tyrannical Characters of Henry VII., Henry VIII., Mary, and Elizabeth; Privilege of Parliament, and its Servility; Interference by the Executive in Parliamentary Elections, and its results; General State of Political Affairs; Ill Effects from the Distribution of Abbey Lands; Corruption of the Municipal Institutions; Liberty of the Press; Pecuniary Exactions; Impressment; Rescission of Tyrannical Statutes by Edward VI.; Popular Statutes and Trial by Jury; Administration of Justice; Court of Star Chamber; Punishment by Torture; and Regulations of Police and Commerce, as existing from 1485 to 1603,—will be found under the "House of Tudor."

The Suppression of Monasteries, and the Reformation of the Anglican Church, under the Tudors, have been delineated, from which it will be perceived that the only descendant, representative, or successor to the ancient British Church, and the only descendant, representative, or successor of the Church, which Gregory sent Augustine to plant among the Anglo-Saxons, is the present Church of England; and that sect, commonly called "Roman Catholics," are nothing but a mere body of dissenters from the Anglican Church.

An outline of the early history of the principal

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dogmas of the Anglican Church has been likewise given for the purpose of establishing the proposition, that the changes which were effected under the Tudors were justified by the practice of the Primitive Church, and that the Roman Catholic schismatic doctrines are of modern origin, and unjustifiable, and that the schism which interrupted the communion between the Churches of Rome and England is wholly the work of the former, whose schismatical conduct has even brought into question her claim to the appellation of "Catholic."

Under the title "House of Stuart," have been included the reigns of James I., Charles I., Charles II., James II., and William III.

The Defective Title of James I. to the Throne; his Improper Influence over the Borough Institutions; Prerogative of the Crown; and Privilege of Parliament, with its Powers of Commitment,—have been considered.

Character of Charles I.; Proceedings of his First Parliament; Parliaments of 1626, 1628, and 1629; Unconstitutional Proceedings of the Executive; Court of Star Chamber; Illegal Taxation; Case of Hampden; the First Parliament of 1640; Invasion by the Scots, and the Council of York; with the Infamy of the Long Parliament,—have been exemplified.

Under the reign of Charles II., commentaries have been made upon the Misfortunes of Anarchy; Lenient

Proceedings at the Restoration; Grant of Royal Revenues; Disbanding the Army; Titles to Property; Parliament of 1661; Punishment of the Regicides; Corporation Act; Triennial Act; Religious Dissensions; Original Jurisdiction in Civil Causes, as claimed by the House of Lords; Impeachment of Danby; Appropriation of Supplies; Administration of Justice; Habeas Corpus Act; Quo Warranto Informations; and Attempts to create an Absolute Monarchy.

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Duplicity of James II.; Parliament of 1685; Prerogative of Dispensation; the Ecclesiastical Commission; Unconstitutional Exercise of the Prerogative; and the Expulsion of James II. from the Throne,—have experienced attention.

The progress of Puritanical Republicanism, and Roman Catholic Treason, during the Stuart Era, have been depicted, from whence it will be perceived that the superior wisdom and sanctity of the Anglican Church was the *only* firm basis of our monarchical government, and of that civil liberty which equally protects, and punishes, the peasant and the prince,—in fact, to adopt the last exhortation of Charles I. to his son, “that scarce any one who hath been a beginner, or an active persecutor of this late war against the Church, the laws, and me, either was, or is, a true lover, embracer, or practiser of the Protestant religion established in England.”

Principles under which the Executive Power was intrusted to the Prince of Orange; Declaration and

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Bill of Rights; Acts of Settlement; Corrupt Decisions of Committees of the House of Commons respecting the Municipal and Parliamentary Elective Franchises; Act of Toleration; Settlement of the Revenue; and Triennial Bill,—conclude the Introduction.

The Treatise of De Lolme is contained in the Second Volume. The First Book contains a survey of the various Powers included in the English Constitution, and of the Laws both in civil and criminal cases, and is subdivided into fourteen chapters, in which are discussed,—the Causes of the Liberty of the English Nation; Legislative Power; Executive Power; Boundaries which the Constitution has set to the Royal Prerogative; Private Liberty, or the Liberty of Individuals; the Law that is observed in England in regard to Civil Matters; Courts of Equity; Criminal Justice; and the Laws relative to Imprisonment.

The Notes affixed to this division of the work, have corrected the inaccuracies of the original text: thus, to Chapter IV., the number of Parliamentary Representatives under Stat. 2 William IV. c. 45, 2 & 3 William IV. cc. 65, 88; Amount of Population represented in Parliament; Qualifications for Members of Parliament; Qualifications for County and Borough Voters; Mode in which the House of Commons is summoned; Transmission of Election Writs; Proclamations for County and Borough Elections; Treating and Bribing at Parliamentary Elections; Interference by Peers in Parliamentary Elections; Interference by the Military; Riots; and the rights

of the Representative Peers under the Acts of Union between Scotland, Ireland, and England,—have been stated. PREFACE.

The Notes to Chapter V. detail the reasons for leaving the dispensation of Justice and Mercy to the discretion of the Crown, and intrusting the Military Power to the Executive, and explain the principles under which it is held, that “the King can do no Wrong.” Allusion has likewise been made to the component members of the York and Canterbury Convocations, and the Statutes relative to the nomination and consecration of Suffragan Bishops.

A Statement of the Public Income and Expenditure of the United Kingdom in the year ended January 5, 1837, has been incorporated in the Notes to Chapter VI., in which information will be found relative to the Customs and Excise; Stamps; Assessed and Land Taxes; Post Office; Crown Lands; Public Debt; Civil Government; Justice; Diplomacy; Forces; Preventive Service; Taxes; Superannuation, or Retired Allowances; Compensation Allowances; Public Works; Quarantine, and Warehousing Establishments; Colonial Charges; Expenses for Special and Temporary Objects; Public Charitable Institutions; Education, Science, and Art; Miscellaneous Charges of a Permanent and Temporary nature; and Abolition of Slavery.

The principles under which the grant of a Civil List was made to Her Majesty Queen Victoria, the Restrictions which have been placed against the grant of

PREFACE. Pensions, and information respecting the Revenues of the Duchies of Cornwall and Lancaster,—will be found in the Notes to Chapter VII.

Tabular Statements of the Church Revenues have been settled, and appended to Chapter VIII.; from which a sketch has been afforded of the Number of Benefices in each Diocese; total Amount of Incomes, gross and net, of the Incumbents in each Diocese, also the Averages of each—respectively; Number of Curates in each Diocese, total Amount of their Stipends, and Average thereof; also four Scales of the Incomes of the Beneficed Clergy,—the first advancing by 10*l.* at each step of the scale to 200*l.*, the second by 20*l.* to 500*l.*, the third by 50*l.* to 1000*l.*, the fourth by 100*l.* to 2000*l.*, and from thence by 500*l.* to 4000*l.* and upwards, there being only two above the last-mentioned amount; Appropriations and Improvements, showing the number possessed by each class, with the Number of Cases in each Diocese in which the Vicarage is partly or wholly endowed with the Great Tithes; and the Number of Cases in each Diocese in which there is a Glebe House, fit or unfit for residence, or in which there is none.

A detailed Statement has been prepared of those who, from “birth,” “office,” “pensions,” “contracts,” or other circumstances, are disqualified from being Members of Parliament.

Some of the principles of the “Roman Laws” having been indirectly embodied in the jurisprudence

of this country, and De Lolme having made frequent allusions to such enactments, suggested the expediency of giving a Sketch of their Origin, Rise, and Progress, under Nine Periods of the Roman History. 1. The Foundation of Rome. 2. The Twelve Tables. 3. Abolition of the Decemvirs. 4. Reign of Augustus. 5. Reign of Hadrian. 6. Reign of Constantine the Great. 7. Reign of Theodosius the Second. 8. Reign of Justinian. 9. Reign of his Successors, till the Fall of the Empire in the East.\* The Revival of the Study of the Civil Law, in consequence of the discovery of the Pandects at Amalphi, its Introduction into England, and the Courts in which the Civil and Canon Laws are permitted to be restrictively used,—are likewise described.

The proceedings in Civil Actions have been essentially changed by recent Statutes, particularly by those of 1 George IV. c. 87; 1 George IV. c. 55; 3 George IV. c. 39; 6 George IV. c. 96; 7 & 8 George IV. c. 71; 9 George IV. c. 14; 9 George IV. c. 15; 11 George IV. & 1 William IV. c. 38; 1 William IV. c. 3; 1 William IV. c. 7; 1 William IV. c. 21; 1 William IV. c. 22; 1 William IV. c. 70; 1 & 2 William IV. c. 58; 2 William IV. c. 39; 3 & 4 William IV. c. 42; 3 & 4 William IV. c. 67; 6 William IV. c. 62; in consequence of which the text in Chapter X. has been rendered, in many respects, inapplicable,—but its inaccuracy has been rectified, and every information compiled respecting “ Civil Process.”

The Notes to Chapter XI. contain an early history



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of the Courts of Equity; Principles under which such Courts are directed; Mode in which a Bill in Equity is preferred; the Form of making Defence; Circumstances under which an Equitable Jurisdiction is exercised in cases of Accident, Mistake, Fraud, Trustees, Transactions between Attorney and Client, Expectant Heirs, Guardian and Ward, Infants, Injunctions, Account, and Specific Performance of Agreements. Under "Statutable Jurisdiction," information will be derived respecting Commissions of Review, Bankruptcy, Lunatics, Charities, Habeas Corpus Act, Friendly Societies, Justices of the Peace, and Private Acts of Parliament.

Origin of Trial by Jury; Duties of Jurors; Distinction between Full Proof and Mere Preponderance of Evidence; Artificial Evidence; Legal Presumptions; Conventional Evidence; general Restrictions on Jurors; Questions of Fact, and Conclusions of Law; Demurrer to Evidence; Moving the Court for a New Trial; Grounds upon which New Trials are granted; and Advantages arising from the institution of Juries,—have been comprised in the Note to Chapter XIII.

The Second Book of De Lolme contains a view of the Advantages of the English Government, and of the Rights and Liberties of the People, and is sub-divided into twenty-one chapters, in which observations have been made relative to the Unity of the Executive Power; Advantages resulting from the Division of the Legislative Power, and in which an inquiry is made whether it would promote public liberty that the laws

should be enacted by the votes of the people at large; Disadvantages of Republican Governments; Usefulness of the Power of the Crown; Election of Members of Parliament; Liberty of the Press; Right of Resistance; Peculiar manner in which Revolutions have always been concluded in England; Manner after which the Laws for the Liberty of the Subject are executed in England; Essential Differences between the English Monarchy, as a Monarchy, and all those with which we are acquainted; What kind of Danger the Right of Taxation may be exposed to; and the Nature of Divisions that take place in England.

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The principal Note appended to this division of the text is a Statement of Criminal Offences, and Statutes under which they are punishable; an Analysis of Crimes committed in 1837; of the Sentences passed; those who were Acquitted or not Prosecuted; Number of Offenders tried before the different Courts; Ages of the Criminals; Result of Proceedings against Offenders aged Twelve Years and under, with reference to their respective Ages; Result of Proceedings against Offenders aged Twelve Years and under, with reference to their Offences; and the degrees of Instruction which the Prisoners had received.

Genealogical Tables have been settled, of the Saxon and Danish Kings; Norman Kings of England; House of Plantagenet; Line of Lancaster; Line of York; House of Tudor; Houses of Stuart, and of Brunswick,—with an explanatory statement prefixed, of the “lines of descent” and “contractions.”

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The Advertisement of De Lolme, Table of Contents, Statutes cited, Cases cited, Index, and Errata et Corrigenda (to which, in cases of quotation, references are requested), will be found prefixed to the Introduction.

A Synopsis of the matter contained in the following pages, has been likewise embodied in the Index, under the titles of "De Lolme," "Introduction," and "Reformation."

From my learned friends Mr. Berrey, Dr. Lee, and Mr. Jebb; and from the valuable publications of the Hon. and Rev. A. P. Perceval, Dr. Short, Mr. Hallam, Dr. Lingard, Lord John Russell, Dr. Southey, Mr. Sharon Turner, the Bishop of Down and Connor, Sir Henry Ellis, Mr. Duffus Hardy, Mr. Starkie, Dr. Geldart, and Mr. Maddock; assistance has been derived, which is thus publicly acknowledged with sentiments of gratitude and respect.

61, CHANCERY LANE,  
*May 10, 1838.*

## ADVERTISEMENT.

THE Book on the English Constitution, of which a new edition is here offered to the public, was first written in French, and published in Holland. Several persons have asked me the question, How I came to think of treating of such a subject? One of the first things in this country, that engages the attention of a stranger who is in the habit of observing the objects before him, is the peculiarity of its government: I had moreover been lately a witness of the broils which had for some time prevailed in the republic in which I was born, and of the revolution by which they were terminated. Scenes of that kind, in a state which, though small, is independent, and contains within itself the principles of its motions, had naturally given me some competent insight into the first real principles of governments: owing to this circumstance, and perhaps also to some moderate share of natural abilities, I was enabled to perform the task I had undertaken with tolerable success. I was twenty-seven years old when I came to this country: after having been in it only a year, I began to write my work, which I published about nine months afterwards; and have since been surprised to find that I had committed so few errors of a certain kind: I certainly was fortunate in avoiding to enter deeply into those articles with which I was not sufficiently acquainted.

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The book met with rather a favourable reception on Continent; several successive editions having been

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\* In regard to two subscribers in particular, I was, I confess, sadly disappointed. Though all the booksellers in London had at first refused to have anything to do with my English edition (notwithstanding the French

After mentioning the advantages with which my work has not been favoured, it is, however, just that I should give an account of those by which it has been attended. In the first place, as is above said, men of high rank have condescended to give their approbation to it; and I take this opportunity of returning them my most humble acknowledgements. In the second place, after the difficulties, by which the publication of

work was extremely well known), yet soon after I had thought of the expedient of a subscription, I found that two of them, who are both living, had begun a translation, on the recommendation, as they told me, of a noble lord, whom they named, who had, till a few years before, filled one of the highest offices under the crown. I paid them ten pounds, in order to engage them to drop their undertaking, about which I understood they already had been at some expense. Had the noble lord in question favoured me with his subscription, I would have celebrated the generosity and munificence of my patron; but as he did not think proper so to do, I shall only observe that his recommending my work to a bookseller cost me ten pounds.

At the time the above subscription for my English edition was advertising, a copy of the French work was asked of me for a noble earl, then invested with a high office in the state; none being at that time to be found at any bookseller's in London. I gave the only copy I had (the consequence was, that I was obliged to borrow one, to make my English edition from): and I added, that I hoped his lordship would honour me with his subscription. However, my hopes were here again confounded. As a gentleman who continues to fill an important office under the crown, accidentally informed me, about a year afterwards, that the noble lord here alluded to had lent him my French work, I had no doubt left that the copy I had delivered had reached his lordship's hand; I therefore presumed to remind him, by a letter, that the book in question had never been paid for; at the same time apologizing for such liberty from the circumstances in which my late English edition had been published, which did not allow me to lose one copy. I must do his lordship (who is moreover a knight of the garter) the justice to acknowledge, that, no later than a week afterwards, he sent two half-crowns for me to a bookseller's in Fleet-street. A lady brought them in a coach, who took a receipt. As she was, by the bookseller's account, a fine lady, though not a peeress, it gave me much concern that I was not present to deliver the receipt to her myself.

At the same time I mention the noble earl's great punctuality, I think I may be allowed to say a word of my own merits. I waited, before I presumed to trouble his lordship, till I was informed that a pension of four thousand pounds was settled upon him (I could have wished much my own creditors had, about that time, shown the like tenderness to me); and I moreover gave him time to receive the first quarter.

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the book had been attended and *followed*, were overcome, I began to share with booksellers in the profit arising from the sale of it. These profits I indeed thought to be but scanty and slow: but then I considered this was no more than the common complaint made by every trader in regard to his gain, as well as by every great man in regard to his emoluments and his pensions. After a course of some years, the net balance, formed by the profits in question, amounted to a certain sum, proportioned to the size of the performance. And, in fine, I must add, to the account of the many favours I have received, that I was allowed to carry on the above business of selling my book, without any objection being formed against me from my not having served a regular apprenticeship, and without being molested by the inquisition.—Several authors have chosen to relate, in writings published after death, the personal advantages by which their performances had been followed: as for me, I have thought otherwise; and, fearing that during the latter part of my life I may be otherwise engaged, I have preferred to write now the account of my successes in this country, and to see it printed while I am yet living.

I shall add to the above narrative (whatever the reader may be pleased to think of it) a few observations of rather a more serious kind, for the sake of those persons who, judging themselves to be possessed of abilities, find they are neglected by such as have it in their power to do them occasional services, and suffer themselves to be mortified by it. To hope that men will in earnest assist in setting forth the mental qualifications of others, is an expectation which, generally speaking, must needs be disappointed. To procure one's notions and opinions to be attended to, and approved by the circles of one's acquaintance, is the

universal wish of mankind. To diffuse these notions farther, to numerous parts of the public, by means of the press or by others, becomes an object of real ambition; nor is this ambition always proportioned to the real abilities of those who feel it: very far from it. When the approbation of mankind is in question, all persons, whatever their different ranks may be, consider themselves as being engaged in the same career; they look upon themselves as being candidates for the very same kind of advantage: high and low, all are in that respect in a state of primeval equality; nor are those who are likely to obtain some prize, to expect much favour from the others.

This desire of having their ideas communicated to, and approved by, the public, was very prevalent among the great men of the Roman commonwealth, and afterwards with the Roman emperors; however imperfect the means of obtaining those ends might be in those days compared with those which are used in ours. The same desire has been equally remarkable among modern European kings, not to speak of other parts of the world; and a long catalogue of royal authors may be produced. Ministers, especially after having lost their places, have shown no less inclination than their masters, to convince mankind of the reality of their knowledge. Noble persons, of all denominations, have increased the catalogue. And, to speak of the country in which we are, there is, it seems, no good reason to make any exception in regard to it; and great men in it, or in general those who are at the head of the people, are, we find, sufficiently anxious about the success of their speeches, or of the printed performances which they sometimes condescend to lay before the public: nor has it been every great man, wishing that a compliment may be paid to his personal knowledge, that has ventured to give such lasting specimens.



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Several additions were made to this work at the time I gave the first English edition of it. Besides a more accurate division of the chapters, several new notes and paragraphs were inserted in it; for instance, in the 11th chapter of the 2d Book: and three new chapters, the 15th, 16th, and 17th, amounting to about ninety pages, were added to the same book. These three additional chapters, never having been written by me in French, were inserted in the third edition made at Amsterdam, translated by a person whom the Dutch bookseller employed for that purpose: as I never had an opportunity to peruse a copy of that edition, I cannot say how well the translator performed his task. Having now parted with the copy-right of the book, I have farther added four new chapters to it (10, 11, B. I.; 19, 20, B. II.) by way of taking a final leave of it; and in order the more completely to effect this, I may perhaps give, in a few months, a French edition of the same (which I cannot tell why I have not done sooner), in which all the above-mentioned additions, translated by myself, shall be inserted.

In one of the former additional chapters (the 17th, B. II.) mention is made of a peculiar circumstance attending the English government, considered as a monarchy, which is, the solidity of the power of the crown. As one proof of this peculiar solidity, it is remarked, in that chapter, that all the monarchs who ever existed, in any part of the world, were never able to maintain their ground against certain powerful subjects (or a combination of them) without the assistance of regular forces at their constant command; whereas it is evident that the power of the crown, in England, is not at this day supported by such means; nor even had the English kings a guard of more than a few scores of men, when their power, and the exertions they at times made of it, were equal to what has ever been related of the most absolute Roman emperors.

The cause of this peculiarity in the English government, is said, in the same chapter, to lie in the circumstance of the great or powerful men, in England, being divided into two distinct assemblies, and, at the same time, in the principles on which such a division is formed. To attempt to give a demonstration of this assertion otherwise than by facts (as is done in the chapter here alluded to,) would lead into difficulties which the reader is little aware of. In general, the science of politics, considered as an *exact science*,—that is to say, as a science capable of actual demonstration,—is infinitely deeper than the reader suspects. The knowledge of man, on which such a science, with its preliminary *axioms* and *definitions* is to be grounded, has hitherto remained surprisingly imperfect: as one instance how little man is known to himself, it might be mentioned that no tolerable explanation of that continual human phenomenon, laughter, has been yet given; and the powerful complicate sensation which each sex produces in the other, still remains an equally inexplicable mystery.

To conclude the above digression (which may do very well for a preface), I shall only add, that those speculators who will amuse themselves in seeking for the *demonstration* of the political theorem above expressed, will thereby be led through a field of observations, which they will at first little expect; and in their way towards attaining such demonstration, will find the science, commonly called metaphysics, to be at best but a very superficial one, and that the mathematics, or at least the mathematical reasonings hitherto used by men, are not so completely free from error as has been thought\*.

\* Certain errors that are not discovered, are, in several cases, compensated by others, which are equally unperceived.

Continuing to avail myself of the indulgence an author has a right to

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Out of the four chapters added to the present edition, two (the 10th and 11th, B. I.) contain, among other things, a few strictures on the Courts of Equity; in which I wish it may be found I have not been mistaken; of the two others, one (19th, B. II.) contains a few observations on the attempts that may, in different circumstances, be made, to set new limits to the authority of the crown; and, in the 20th a few general thoughts are introduced on the right of taxation, and on the claim of the American colonies in that respect. Any farther observations I may make on the English government, such as comparing it with the other governments of Europe, and examining what difference in the manners of the inhabitants of this country may have resulted from it, must come in a new work, if I ever undertake to treat these subjects. In regard to the American disputes, what I may hereafter write on that account will be introduced in a work which I may at some future time publish, under the title of *Histoire de George Trois, Roi d'Angleterre*, or, perhaps, of *Histoire d'Angleterre, depuis l'Année 1765* (that in which the American stamp-duty was laid) *jusques à l'Année 178—*, meaning that in which an end shall be put to the present contest\*.

J. L. DE LOLME.

November, 1781.

claim in a preface, I shall mention, as a farther explanation of the peculiarity in the English government above alluded to, and which is again touched upon in the postscript to this advertisement, that a government may be considered as a great *ballet* or dance, in which, as in other ballets, every thing depends on the disposition of the figures.

\* A certain book, written in French, on the subject of the American dispute, was, I have been told, lately attributed to me, in which I had no share.

## POSTSCRIPT.

NOTWITHSTANDING the intention above expressed, of making no additions to the present work, I have found it necessary, in this new edition, to render somewhat more complete the 17th chapter, Book II., *On the peculiar foundations of the English monarchy as a monarchy*; as I found its tendency not to be very well understood; and, in fact, that chapter contained little more than hints on the subject mentioned in it: the task, in the course of writing, has increased beyond my expectation, and has swelled the chapter to about sixty pages above what it was in the former edition, so as almost to make it a kind of separate book of itself. The reader will now find, that, in several remarkable new instances, it proves the fact of the peculiar *stability* of the executive power of the British crown, and exhibits a much more complete delineation of the advantages that result from that stability in favour of public liberty.

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These advantages may be enumerated in the following order:—I. The numerous restraints the governing authority is able to bear, and the extensive freedom it can afford to allow the subject, at its own expense: II. The liberty of speaking and writing, carried to the great extent it is in England: III. The unbounded freedom of the debates in the legislature: IV. The power to bear the constant union of all orders of subjects against its prerogatives: V. The freedom allowed to all individuals to take an active part in government concerns: VI. The strict impartiality with which jus-

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The above-mentioned advantages are peculiar to the English government. To attempt to imitate them, or transfer them to other countries, with that degree of extent to which they are carried in England, without at the same time transferring the whole order and conjunction of circumstances in the English government, would prove unsuccessful attempts. Several articles of English liberty already appear impracticable to be preserved in the new American commonwealths. The Irish nation have of late succeeded in imitating several very important regulations in the English government, and are very desirous to render the assimilation complete; yet, it is possible, they will find many inconveniences arise from their endeavours, which do not take place in England, notwithstanding the very great general similarity of circumstances in the two kingdoms in many respects; and even also, we might add, notwithstanding the respectable power and weight the crown derives from its British dominions, both for defending its prerogative in Ireland, and preventing anarchy: I say, the similarity in *many respects* between the two kingdoms; for this resemblance may, perhaps, fail in regard to some important points: however, this is a subject about which I shall not attempt to say anything, not having the necessary information.

The last chapter in the work, concerning the nature of the *divisions that take place in this country*, I have left in every English edition as I wrote it at first in

French. With respect to the exact manner of the debates in parliament, mentioned in that chapter, I cannot well say more at present than I did at that time, as I never had an opportunity to hear the debates in either house. In regard to the divisions in general to which the spirit of party gives rise, I did perhaps the bulk of the people somewhat more honour than they really deserve, when I represented them as being free from any violent dispositions in that respect: I have since found, that, like the bulk of mankind in all countries, they suffer themselves to be influenced by vehement prepossessions for this or that side of public questions, commonly in proportion as their knowledge of the subject is imperfect. It is, however, a fact, that political prepossessions and party spirit are not productive, in this country, of those dangerous consequences which might be feared from the warmth with which they are sometimes manifested. But this subject, or in general the subjects of the political quarrels and divisions in this country, is not an article one may venture to meddle with in a single chapter; I have, therefore, let this subsist, without touching it.

I shall, however, observe, before I conclude, that an accidental circumstance in the English government prevents the party spirit, by which the public are usually influenced, from producing those lasting and rancorous divisions in the community which have posterred so many other free states, making of the same nation, as it were, two distinct people, in a kind of constant warfare with each other. The circumstance I mean is, the frequent reconciliations (commonly to quarrel again afterward) that take place between the leaders of parties, by which the most violent and ignorant class of their partisans are bewildered, and made to lose the scent. By the frequent coalitions between *Whig* and *Tory* leaders, even that party dis-

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tion, the most famous in the English history, has now become useless: the meaning of the words has thereby been rendered so perplexed that nobody can any longer give a tolerable definition of them; and those persons who now and then aim at gaining popularity by claiming the merit of belonging to either party, are scarcely understood. The late *coalition* between two certain leaders has done away, and prevented from settling, that violent party spirit to which the administration of Lord Bute had given rise, and which the American disputes had carried still farther. Though this coalition has met with much obloquy, I take the liberty to rank myself in the number of its advocates, so far as the circumstance here mentioned.

J. L. DE LOLME.

May, 1784.

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## ERRATA ET CORRIGENDA.

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- 20, lines 25 and 26, *dele* "which was illustrated after a short period, by the exchange," *lege* "and after a short period exchanges were made."
- 25, side-note, *dele* "Tenants of mesne land," *lege* "Tenants of mesne lord."
- 53, line 22, *dele* "to hold," *lege* "from holding."
- 179, line 38, *dele* "their," *lege* "the."
- 180, line 1, *dele* "their," *lege* "the."
- 188, *dele* note 18, *lege* Perceval's Hist. Not. 16, 17. Conc. II. 29, 32, 572.  
Conc. IV. 759, 770. Conc. XI. 152, 153. Conc. XIII. 515.
- 219, note 10, *dele* "Art. IX." *lege* "Art. XXVII."
- 254, line 3, *dele* "them embers," *lege* "the members."
- 263, line 38, *dele* "ordinances," *lege* "ordinaries."
- 278, line 1, *dele* "this," *lege* "the."
- 330, after line 14, insert sectional title, "5. Privilege of Parliament."
- 369, line 17, *dele* "to serve," *lege* "from serving."
- 445, line 7, *dele* "although," *lege* "during which period."
- 600, *dele* running-head title, *lege* "Limitations on."
- 716, line 42, *dele* "It is no uncommon circumstance," *lege* "It is a circumstance which has occurred."
- 717, line 2, *dele* "and," *lege* "and it is no uncommon circumstance."
- In notis, *dele* "infra" passim.

# GENEALOGICAL TABLES.

## LINES OF DESCENT, AND CONTRACTIONS.

—————	Immediate Descent.
- - - - -	Line of Descent, when the number of generations is not specified.
~~~~~	Line of Illegitimacy.
Concubines and Bastards in <i>italic</i> .	
d. b. F.	Died before his Father.
d. y.	Died young.
N.	Name unknown.

IN the Chronological Table of the Norman Kings of England, the descent of the Viscounts Courtenay has been taken from "Betham's Tables," but does not coincide with that which has been stated by Dugdale in his "Baronage," or with the opinion of Mr. King of the Heralds' College.

Doubts have existed among genealogists as to the mother of some of the natural children of Henry I., which will account for an apparent inaccuracy in the lines of descent respecting their parentage.

THE RISE AND PROGRESS  
OF THE  
ENGLISH CONSTITUTION.

## THE INTRODUCTION.

# CHAPTER I.

## THE SAXON PERIOD.

A.D. 564 to 1066.

### 1. Preliminary Observations.

- |                                     |                                  |
|-------------------------------------|----------------------------------|
| 2. Changes effected by the Saxons.  | 5. Feudal Divisions of Society.  |
| 3. Prerogatives of the Saxon Kings. | 6. Local Divisions of the Count. |
| 4. The Witena-Gemot.                | 7. Municipal Police.             |

### 1. Preliminary Observations.

It was the depravity of multitudes, as well as their mutual wants, which obliged men first to enter into societies, depart from their natural liberty, and subject themselves to government,—in fact, the bands of society are kept together by the hope of reward, and the fear of punishment.

By the constitution of a country is meant so much of its law, as relates to the designation and form of the legislature; the rights and practices of the several parts of the legislative body; the construction, office, and jurisdiction, of courts of justice.

The constitution is one principal division, section, or title, of the code of public laws; distinguished from the rest only by the superior importance of the subject of which it treats: therefore the terms “constitutional” and “unconstitutional,” mean legal and illegal.

Society preserved by the hope of reward, and fear of punishment.

Terms constitutional and unconstitutional mean legal and illegal.

In England, the system of public jurisprudence is made up of acts of parliament, of decisions of courts of law, and of immemorial usages; consequently, these are the principles of which the English constitution itself consists, the sources from which all our knowledge of its nature and limitations is to be deduced, and the authorities to which all appeal ought to be made, and by which every constitutional doubt can alone be decided.

Components of the system of public jurisprudence.

Most of those who treat of the English constitution, consider it as a scheme of government formally planned and contrived by our ancestors, in some certain æra of our national history, and as set up in pursuance of such regular plan and design. Something of this sort is secretly supposed, or referred to, in the expressions of those, who speak of the

The English constitution has grown out of occasion and emergency.



A.D. 564  
to  
1066.

"principles of the constitution,"—of bringing back the constitution to its "first principles,"—of restoring it to its "original purity," or "primitive model."

The records of history justify the assertion that, no such plan was ever formed, consequently no such first principles, original model, or standard, exist:—that is, there never was a date or point of time in our history, when the constitution of England was to be set up anew, and when it was referred to any single person, or assembly, or committee, to frame a charter for the future government of the country; or when a constitution so prepared and digested, was by common consent received and established.

The constitution of England, like that of most countries of Europe, hath grown out of occasion and emergency; from the fluctuating policy of different ages, from the contentions, successes, interests, and opportunities, of different orders and parties of men in the community<sup>1</sup>.

Difficulties in the  
interpretation of  
ancient records.

The early history of our constitution is involved in obscurity, from the difficulty which is created in interpreting the ancient records, as they frequently refer to antecedent documents, in language different from that of the originals; and even in different parts of the same document, a change of language occurs, where a circumstance or fact is intended to be reiterated.

Thus the word "comitatus" was sometimes used to describe a "county,"—sometimes to describe the dignity of an "earl,"—and sometimes to describe the "property of an earl,"—which, in the charter of John, is called the "barony of an earl."

By the charters of Henry the First, lands holden of the crown were to be redeemed by the heir "justa et legitima relevatione;" the words "justa et legitima" were capable of different interpretations, and before the charter of John the reliefs exacted seem to have been in a great degree arbitrary<sup>2</sup>.

Great deficiency  
of early records,  
and the causes to  
which it may be  
ascribed.

It cannot be deemed surprising that a great deficiency of early records exists, when it is considered that, the want of such documents had been a subject of complaint, even in the reign of Henry the Second.

This defect has arisen partly from the habits of that age, when much was done verbally, and merely by acts of ceremony, without the formation of any written document to

<sup>1</sup> Paley, Mor. and Pol. Phil. ch. 7.

<sup>2</sup> Madox, Hist. Exchequer.

A.D. 564  
to  
1066.

---

preserve the memory of the transaction; partly from the disturbed state of the country for some time after the advent of William the First, and from the disorders which prevailed during the reign of Stephen, when everything was thrown into confusion, the ordinary administration of justice being long interrupted, and the country enduring the scourge of the most destructive civil war which ever afflicted England.

The more settled reign of Henry the Second subsequently became unfortunate; his son Richard was generally absent from the country, and during his absence, and especially whilst he was in captivity, great disorder prevailed.

The reigns of John and Henry the Third, extending through more than seventy years, were generally times, either of civil war, or of gross misrule; and it was the great business of the early part of the reign of Edward the First to compel the restoration of domestic tranquillity. His unfortunate attempt in Scotland, the consequent removal of his exchequer to York, his residence in the north, and the transaction of public business there, remote from the ancient repositories of records at Westminster, produced confusion in all the public offices, and particularly in the Exchequer.

The reign of Edward the Second was disturbed, and ended with his deposition and death; and afterwards, especially during the wars between the Houses of York and Lancaster, the care of public documents was probably too often neglected.

And the civil war in the reign of Charles the First produced, by its consequences, the destruction of many documents which might have been preserved in the Lords' House of Parliament, and in the Privy Council Office.

Various inaccuracies exist, as to the distinction between "constitution" and "government." Bolingbroke correctly discriminates the one from the other. "By 'constitution' we mean, whenever we speak with propriety and exactness, the assemblage of laws, institutions, and customs, derived from certain fixed principles of reason, directed to certain fixed objects of public good, that compose the general system, according to which the community hath agreed to be governed.

Distinction between constitution and government.

"By 'government' we mean, whenever we speak in the same manner, that particular tenor of conduct, which a chief magistrate, and inferior magistrates under his direction and influence, hold in the administration of public affairs.



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---

“We call this a good government, when the execution of the laws, the observation of the institution and customs, in short, the whole administration of public affairs, is wisely pursued, and with a strict conformity to the principles and objects of the constitution.

“We call it a bad government, when it is administered on other principles, and directed to other objects, either wickedly or weakly, either by obtaining new laws which want this conformity, or by perverting old ones which had it, and when this is done without law, or in open violation of the laws, we term it a tyrannical government.”

## 2. *Changes effected by the Saxons.*

The English constitution not derived from the Romans.

It has been affirmed with an extraordinary degree of pertinacity, that some of the primary principles of our constitution have been derived from the Romans; but the slightest unprejudiced examination of the premises from which those deductions have been made, clearly establish an opposite hypothesis; in fact, stronger evidence should be produced, in support of such a theory, than the bean ideal of an antiquary's imagination,—the casual discovery of a few old coins,—and the existence of an occasional tumulus.

Origin of the English constitution.

The constitution of England is indebted for its origin, to the accidental concurrence of events in the Saxon and Norman æras, which subsequently assuming the sanctity of ancient custom, by acquiescence obtained the authority of positive law.

Destruction of the British and Roman institutions by the Saxons.

The Saxon invaders of Britain, as they proceeded in their conquests, expelled from those parts of the island which they subdued, almost all the ancient inhabitants, and having first destroyed such institutions as might have been established either by the Britons or the Romans, afterwards new settled the country, and made it purely Saxon.

The truth of this proposition is proved by the state of the country and its language at this moment. The language is founded upon the Saxon, and almost every village,—almost every town,—bears a Saxon name,—scarcely a trace of an ancient British appellation remaining, except in the names of some of the principal cities, such as London and Winchester, and in the names of great rivers, and of some mountains and marshes.

Ethelbert, king of Kent, who reigned from A.D. 564 to 616, was distinguished as the author of the first written Saxon laws, which 'have descended to us, or are known to have been established':—and it is from the laws of Ethelbert and those of his successors that the best illustration of the Saxon æra can be acquired\*.

A.D. 564  
to  
1066.  
Saxon laws.

### 3. *Prerogatives of the Saxon Kings.*

At the head of the Saxon institutions was the king or "cyning," who was distinguished by superior rank and privileges. He was to be prayed for, and voluntarily honoured<sup>1</sup>; his word was to be taken without an oath<sup>2</sup>; and he had the prerogative of changing a capital into a pecuniary punishment<sup>3</sup>. His "mund-byrd" and his "were" were larger than those of any other class in society<sup>4</sup>; his safety was protected by high penalties for offences committed in his presence or habitation, or against his family<sup>5</sup>. He had the lordship of the free<sup>6</sup>; he had the option to sell over sea, to kill, or take the were of a freeman thief; also to sell a "theow" over sea, or take a penalty<sup>7</sup>; he could mitigate penalties<sup>8</sup>; and could remit them, if private rights were not directly damaged<sup>9</sup>; he had a sele or tribunal before which thieves were brought<sup>10</sup>; he had a tribunal in London<sup>11</sup>; his tribunal was the last court of appeal<sup>12</sup>; he was executor superintendant of the general laws, and usually received the fines attached to crimes<sup>13</sup>. The Jews were his property<sup>14</sup>; the high executive officers, the "caldormen," "gerefas," "thegns," and others, were liable to be displaced by him<sup>15</sup>. He convoked the

<sup>1</sup> Wilk. Leg. Sax. 7.

<sup>2</sup> Some think that the laws of Ethelbert are the first Anglo-Saxon composition (1 Turn. Hist. Ang.-Sax. 232), others give priority to Beowulf, the Traveller's Song, &c. Beowulf is said to be nearly cotemporary with Hengist (Beowulf by Kemble, Pref. xx. Lond. 1833); but the poem contained in the Cotton MS. Vit. A. xv. is not so old. There occur in it Christian allusions which fix this text, at least, at a period subsequent to A.D. 597. Some eminent scholars attribute this MS. to the early period of the tenth century. Conybeare's Illust. of Ang.-Sax. Poetry, 32. 3 Turn. Hist. Ang.-Sax. 281. Bosworth's Origin of the Germanic and Scandinavian Languages, 14 et seq.

<sup>1</sup> Wilk. Leg. Sax. 10.

<sup>2</sup> Ibid. 11.

<sup>3</sup> 3 Henry, 361.

<sup>4</sup> Wilk. Leg. Sax. 71, 72.

<sup>5</sup> Ibid. 22.

<sup>6</sup> Ibid. 2.

<sup>7</sup> Ibid. 12.

<sup>8</sup> Ibid. 77.

<sup>9</sup> Spelm. Conc. 435; 3 Henry, 361.

<sup>10</sup> Wilk. Leg. Sax. 8.

<sup>11</sup> Ibid. 10.

<sup>12</sup> Domesday in loc.

<sup>13</sup> 1 Heming. Chart. 265.

<sup>14</sup> Wilk. Leg. Sax. 203.

<sup>15</sup> Ibid. 109, 122.

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to  
1066.

Accession to the  
throne, not go-  
vernied by here-  
ditary succession.

councils of the "Witan"<sup>16</sup>, and summoned the people to the army, which he commanded.

But the accession of the Anglo-Saxon sovereign was not governed by the rules of hereditary succession; his office was the invention, his appointment was the election of his people; present convenience being more attended to than general principles, and the idea of any right when once excluded, was but feeble and imperfect. Thus, although the dynasties of Wessex were more steady and regular than any others in the octarchy; yet the son of its third king, Cealwin, did not succeed, though he existed. The son of Ceolwulf was equally passed by. Ceadwalla left two sons, yet Ina acceded, to their prejudice, and Ina was elected king, though his father was alive. Some other irregularities of the same sort took place before Egbert, and continued after him.

Ethelbert, the second son of Ethelwulph, left sons, and yet Ethelred succeeded in their stead. They were still excluded, when Alfred and his son received the crown. Athelstan, though illegitimate, was chosen in preference to his legitimate brothers. On Edgar's death, both his eldest and youngest sons were made candidates for the crown, though Edward was preferred; and although Edmund Ironside left a son, his brother, Edward the Confessor, after the Danish reigns, was preferred before him. To the exclusion of the same prince, Harold the Second obtained his election<sup>17</sup>.

Revenues of the  
crown.

The revenues of the crown were the rents and produce of its lands in demesne: customs in the sea-ports; tolls in the markets, and in the cities on sales; duties and services to be paid in the burghs or to be commuted for money; "wites," or penalties, and forfeitures, which the law attached to certain crimes and offences; heriots from thanes, and various payments and benefits arising on the circumstances stated in the laws. The crown being only the usufructuary of its lands, could not alienate any of these lands, even to the church, without the consent of the Witena-Gemot<sup>18</sup>.

The Saxon kings never claimed the power of making laws, or imposing taxes, without the advice and consent of their Witena-Gemot; and as hereditary titles of honour, unconnected with offices, were unknown<sup>19</sup>, they could not have exercised the prerogative of granting titles<sup>20</sup>.

<sup>16</sup> Wilk. Leg. Sax. 109.

<sup>17</sup> 3 Turn. Ang.-Sax. 146.

<sup>18</sup> 3 Henry, 361. Squire on the Eng. Const. 211. 1 Spel. Concil. 340.

<sup>19</sup> 3 Henry, 159.

<sup>20</sup> Ibid. 363.

The prerogatives and rights of the Anglo-Saxon *cýning*, were definite and ascertained; they were such as had become established by law or custom, and could be as little exceeded by the sovereign, as withheld by his people.

That they were not arbitrary privileges of an unknown extent, is evinced by William the First finding it necessary, to have an official survey of the royal rights taken in every part of the kingdom; and the hundred, or similar bodies, in every county, made the inquisition to the king's commissioners, who returned to the sovereign that minute record of his claims upon his subjects, which constitutes the Domesday Book. The royal claims in Domesday were, therefore, not the arbitrary impositions of the throne, but were those which the people themselves testified to their king to have been his legal rights.

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to  
1066.

Prerogatives of  
the Saxon *cýning*  
were ascertained  
and defined.

#### 4. *The Witena-Gemot.*

As the king was the highest magistrate, so the Witena-Gemot was the highest court, in which, with the king at its head, the sovereignty of the state resided.

The "*Witena-Gemot*," from its name<sup>1</sup>, seems to import that the Saxon legislature was a selected body; but how that selection was made, whether any of the members claimed an hereditary right, or any right as possessors of land, whether any derived their title from the election of the people, or whether all owed their selection personally to the crown, as the "*carls*" seem to have done, is now unknown.

From the language of the Anglo-Saxon laws, and signa-

Component  
members of the  
*Witena-Gemot*.

<sup>1</sup> The "*Gemot*" and its members have various appellations. In the vernacular tongue they were styled the *Witena-Gemot* (assembly of the wise); the *Englarad gifan* (council givers); the *Eadigra gecheahendlic cynmyc* (illustrious assembly of the wealthy); the *Eadigan* (wealthy); the *Mycel Synoth* (great synod). Saxon Chron. 154; MS. Claud. A. 3; Saxon Chron. 148; Alfred's Will; Wilkins, 76, 102; *ibid.* 72, &c.

In the Latin phrases applied to this assembly by our forefathers, they have been called "*optimates*," "*principes*," "*primates*," "*proceres*," "*conciliatores Anglie*," &c. (Ethelward, 847. Heming. Chart. 15, 17, 23. MS. Claud. MS. Cleop. 3 Gale, 484, 485. 3 Turn. Ang.-Sax. 179.) The kings who allude to them in their grants, call them "*My witan*;" "*meorum sapientum archontum*;" "*heroicorum virorum*;" "*conciliatorum meorum*;" "*meorum omnium episcoporum et principum optimatum meorum*;" "*optimatibus nostris*." Heming. Chart. 2, 41, 57. MS. Claud. C. 9, 103, 112, 113.

But these are only different words to express the same thing. With reference to their presumed wisdom, they were called "*witan*;" with reference to their rank and property, or nomination, they were style "*eadigan*," "*optimates*," "*principes*," "*proceres*," &c.

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tures of the charters, the bishops, abbots, earls, ealdormen, and those who bore the title which was latinised into "Dux," "Principes," &c. were parts of the great national council, and it is also manifest that others besides these higher nobles also attended it; described as "thegns," "ministri," "milites," and several who are mentioned in the charters without any designation of legal rank, except that of being part of the gemot. Thus Ina, in the introduction to his laws, stated them as having been made by the advice of three orders in the nation. "My bishops, and all my ealdormen, and the eldest *witan of my people*, and a great collection of God's servants<sup>2</sup>;" and a charter of Edgar, in 973, besides the king, two archbishops, three bishops, three abbots, four dukes, and four disethengs, has *twenty-one without a title* among the according persons<sup>3</sup>.

The possession of lands, not requisite to constitute a member of the Gemot.

It also seems, from the charters of Kenulf, king of Mercia, A.D. 811, that the Witena-Gemot contained members who had lands, and some who had none, and therefore the latter could not have sat in that assembly by virtue of their baronies or landed property<sup>4</sup>; but whether these persons were representatives of the boroughs has not been ascertained by authentic documents; but arguing from analogy, no such right could have existed, because the commons had no share in the governments established by the Franks, Burgundians, and other northern nations, and we may conclude that the Saxons, who remained longer barbarous and uncivilized than those tribes, would never think of conferring such an extraordinary privilege on trade and industry.

Convention of the "Witena-Gemot."

The "Witena-Gemot" was convened by the king's writ<sup>5</sup>; the times<sup>6</sup> and places<sup>7</sup> of meeting being adapted to circumstances, and the king presiding over its deliberations<sup>8</sup>.

<sup>2</sup> Wilk. Leg. Sax. 14.

<sup>3</sup> Dug. Mon. 244; *ibid.* 29, 37, 62, 66, 103, 141, 211, 215, 229, 238, 244, 258, 266, 276, 287, 288. Heming. Chart. 12, 18, 23, 28, 65, 87, 224. Astle's Charters, MSS. No. 2, 31. 3 Turn. Ang.-Sax. 187. 3 Gale's Script. 517, 520, 523. MSS. Cot. Aug. A 2. Ingulf. Hist. 117.

<sup>4</sup> Dug. Mon. 189; *sed vide* 3 Gale's Script. 513.

<sup>5</sup> Saxon Chron. 163; *vide etiam* 3 Gale's Script. 395. MS. Claud. c. 9, p. 122.

<sup>6</sup> Saxon Chron. 161, 163, 164. Astle's MS. Chart. No. 2. Heming's Chart. 59. Mirror, c. 1, s. 6.

<sup>7</sup> Saxon Chron. 124, 128, 142, 146, 161, 163, 168. Heming. 93. MS. Cot. Aug. 2, 20. Astle's MS. Chart. No. 8, 12. MS. Cleop. B. 13. MS. Claud. c. 9, 121. 3 Turn. Ang.-Sax. 208.

<sup>8</sup> MS. Claud. c. 9, p. 122. Eth. Abb. Ailr.

The principal duties of the "Witena-Gemot" were to elect the Sovereign, assist at his coronation, and to co-operate in the enactment and administration of the laws<sup>9</sup>.

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Duties of the  
Witena-Gemot.

Laws.

Treaties.

The "Witena-Gemot" made treaties jointly with the king; for the treaty with Guthrun and the Danes thus begins:—"This is the treaty which Alfred king, and Gythrun king, and all the witan of England, and all the people in East Anglia, (that is, the Danes,) have made and fastened with oath<sup>10</sup>."

They also aided the king in directing the military preparations of the kingdom. Thus, A.D. 999, the Saxon Chronicle states, that "the king ordered, and all his witan, that man should gather together all the ships that were to go to London<sup>11</sup>."

Command of the  
army.

Impeachments of great men were made before them; thus a gemot assembled in London, A.D. 1052, which "all the eorls and the best men in the country" attended. There Godwin made his defence, and purged himself before his lord the king and all the people, that he was guiltless of the crime charged on him and his sons. The king forgave him and his family, and restored them their possessions and the earldom;—but Archbishop Robert and all the Frenchmen were outlawed, for causing these dissensions between Godwin and the king<sup>12</sup>.

Impeachments.

So likewise "all the *optimates*, meeting at Cynceaster, in the reign of Ethelred, banished Elfie for high-treason, and confiscated all his possessions to the king<sup>13</sup>."

It was also a part of their duties to examine into the state of the churches and monasteries, and their possessions<sup>14</sup>, making and confirming grants of land<sup>15</sup>, releasing land from improper impositions and payments<sup>16</sup>, inquiring into the necessities of the secular deputies, as well as into the monasterial disciplines, and into the ecclesiastical morals<sup>17</sup>, rectifying the casual loss of title-deeds<sup>18</sup>, confirming the acts of previous

Visitation of  
churches and  
monasteries.

<sup>9</sup> Bede, lib. 2, c. 5. 3 Turn. Ang.-Sax. 209.

<sup>10</sup> Wilk. Leg. Sax. 47. Ibid. 104. Saxon Chron. 132, 140, 150. 3 Henry, 360.

<sup>11</sup> Saxon Chron. 126; vide etiam ibid. 130, 165. <sup>12</sup> Ibid. 168.

<sup>13</sup> MS. Claud. c. 9, 123, 124; vide etiam Saxon Chron. 164, 169. 3 Turn. Ang.-Sax. 211.

<sup>14</sup> Astle's MS. Chart. No. 2.

<sup>15</sup> Ibid. No. 8. 1 Dug. Mon. 20.

<sup>16</sup> Ibid. No. 2.

<sup>17</sup> Ibid. No. 12.

<sup>18</sup> Ibid. No. 21.

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to  
1066.

Court of judica-  
ture.

Independence of  
the Witena-  
Gemot from the  
crown.

councils<sup>19</sup>, acting as a high court of judicature<sup>20</sup>, appointing all the magistrates<sup>21</sup>. and regulating the public coin of the kingdom<sup>22</sup>.

That the Witena-Gemot sometimes resisted the royal acts, appears from their not choosing to consider valid a gift of land by Baldred, king of Kent, because he did not please them<sup>23</sup>, and it would seem that the king could not confer any title to land, without the assent of the gemot, for a gift of land by a king is mentioned; "Sed, quia non fuit de consensu magnatum regni, donum id non potuit valere<sup>24</sup>;" and as confirmatory of this position, it appears that, A.D. 811, Cenwulf, at a council, stated he had given some lands of *his own right*, with the *advice and consent* of the said council<sup>25</sup>.

Liability to, and  
powers of, taxa-  
tion.

The lands of the Anglo-Saxons, the burghs, and the people, were subject to definite payments to the king as their lords, and, unless specially exempted, all lands were liable to the building and reparation of bridges and fortifications, and to military expeditions, according to a defined scale.

That which is commonly called "taxation," seems to have commenced in the time of Ethelred, and to have arisen from the evils of a foreign invasion<sup>26</sup>; but these payments were ordered by the king and the Witena-Gemot<sup>27</sup>; in fact, no property belonging to a freeman was taxable, without the consent of the gemot.

### 5. *Personal Ranks in Society.*

Society divided  
into the free and  
bond.

The Saxon laws, Fleta, and the Year Books, exhibit the great personal division of society into the *free* and *bond*: for hereditary legislative dignities were unknown to the Saxons, and the highest orders of the state were accessible to the most humble freeman.

The "Liber  
homo."

The "liber homo," or freeman, has existed in this country from the earliest periods, as well of authentic as of traditionary history, entitled to that station in society as one of his constitutional rights, as being descended from free parents, in contradistinction to "villains," which should be borne in remembrance, because the term "freeman" has been in

<sup>19</sup> MS. Claud. c. 9, 124. Astle's MS. Chart. No. 2.

<sup>20</sup> 1 Heming. Chart. 93, 17, 27, 50, 120. Ingulf. 12.

<sup>21</sup> 1 Henry, 361. <sup>22</sup> 3 Henry, 363. <sup>23</sup> Spelm. Conc. 340.

<sup>24</sup> 1 Dug. Mon. 20. <sup>25</sup> Astle's MS. Chart. No. 8.

<sup>26</sup> Henry Hunt. lib. 5, 357. Brompton. Chron. 879. Ingulf. 55.

<sup>27</sup> Saxon Chron. 126, 132, 136, 140, 142.

modern times perverted from its constitutional signification, without any statutable authority.

A church establishment connected with the state pervaded the country, consisting of archbishops, bishops, abbots, priors, deans, canons, archdeacons, priests, parochial rectors, &c.; besides the monks and nuns of their various cloisters.

A nobility, whose titles were personal, and not inherited, existed, and were known as "ealdorman<sup>1</sup>," "hold<sup>2</sup>," "here-toch<sup>3</sup>," "eorl<sup>4</sup>," and "thegn<sup>5</sup>."

An order of "milites," a species of knighthood, was likewise recognised, who ranked higher than a "freeman<sup>6</sup>."

But these distinctions were nothing more than mere artificial ranks in society as incident to office, the members to which were all equally subservient to the laws as the freeman, between whom, apart from office, no political or vain difference was recognised, except that which resulted from the acquisition of wealth, or the intellectual or moral worth of the individual; and no system of primogeniture existed, the lands of all being transmissible by will, according to the directions of the testator.

It cannot have escaped observation, that the Roman patriotism, even in the boasted times of the Commonwealth, was far from being directed by a liberal spirit; it proceeded from narrow and partial considerations; and the same people who displayed so much fortitude and zeal in establishing and maintaining the freedom of their capital, made no scruple in subjecting the rest of their dominions to an arbitrary and despotical government; and it is to be regretted that analogous principles of worldly selfishness were recognised by the Anglo-Saxons in the treatment of their slaves: but the love of power is natural,—it is insatiable,—almost constantly whetted, and never cloyed by possession.

The villains, under the Anglo-Saxons, had not essentially, any constitutional, or political rights; they were allowed to be put into bonds, to be whipped<sup>7</sup>, and branded<sup>8</sup>; and on one

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to  
1066.

Church Estab-  
lishment.

Nobility.

Milites.

Supremacy of the  
laws.

Transmission of  
lands.

Condition of vil-  
lains.

<sup>1</sup> Wilk. Leg. Sax. 14, 20, 22, 38, 42, 71, 78, 136. Saxon Chron. 76.

<sup>2</sup> Ibid. 71. Saxon Chron. 101, 102. 3 Turn. Ang.-Sax. 224.

<sup>3</sup> Ibid.

<sup>4</sup> Spel. Conc. 164. Wilk. Leg. Sax. 3, 7, 35, 53, 70, 71, 82, 112, 142. Saxon Chron. 37, 42, 62, 121, 122, 123, 127, 164—173.

<sup>5</sup> Wilk. Leg. Sax. 47, 63, 64, 70, 71, 72, 80, 118, 125, 130, 135, 144, 250, 276. Bede, lib. 2, c. 9; et lib. 4, c. 22. Du Cange, voc. *Liberale*.

<sup>6</sup> 3 Turn. Ang.-Sax. 218.

<sup>7</sup> Wilk. Leg. Sax. 15, 22, 52, 53, 59.

<sup>8</sup> Ibid. 103, 109.



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occasion are spoken of as if actually yoked,—“let every man know his teams of men, horses, and oxen<sup>9</sup>,” in fact, they were part of the chattels of their master, and, as such, bought, sold, and transmissible at his pleasure: such was their deplorable state, that even by the laws of Ina<sup>10</sup>, although all other persons were to be punished by pecuniary mulcts, they were punishable with stripes; and even in the *Liber Assisarum* it is expressly laid down, “that whatsoever a villain possesseth is his lord’s;” for which reason the lord could not sue his villain, nor could a villain have even an appeal of “mayhem” against his lord, for if he recovered damages, the lord could retain them.

Anglo-Saxon laws evince an anxiety to increase the number of freemen.

But, notwithstanding the existence of such enactments, the Anglo-Saxon laws evince an anxiety to increase the number of freemen; for wherever a person permanently resided, and was responsible from his inhabitation to the local burdens of the place, he became entitled to *all its local privileges*;—the spirit and letter of the Saxon laws abstractedly contemplating a reciprocal union of burden and benefit, and that principle was acted upon in the most extensive sense until the Tudor dynasty. But as the House of Commons rose in importance, such rights from responsible residency were wilfully and basely encroached upon, for the gratification of personal ambition and political intrigue.

Principle of villinage consisted, in a mutuality of service and of protection.

The common law principle upon which villinage and emancipation depended, was a mutuality, consisting of service upon the one hand, and of protection on the other.

If, by default of the lord, that mutuality was in any way defeated, the condition of villinage was destroyed.

Uncontrolled residence of a villain, within a borough, entitled him to the privileges of a freeman.

If a villain resided one year and a day without the jurisdiction of his lord, and in a borough, he was bound to do his suit at the “court leet,” and upon the jury presenting the fact of residence, he became entitled, and indeed bound to be sworn, enrolled, and recorded as a freeman: and therefore, after such proof of freedom, the lord could not reclaim his villain but by due course of law, and was consequently driven to his writ, *de nativo replegiando*, which he might have at any time within seven years, but after that period the villain was for ever released.

Trading had no relation to the

If a villain traded for a year and a day, it was *prima facie*

<sup>9</sup> Wilk. Leg. Sax. 47.

<sup>10</sup> *Ll. Ina*, s. 54, cited *M. and S. Hist. of Boroughs*, 17.

evidence of his freedom; and from that circumstance alone arose the direct connexion of trade with the acquisition of freedom, but trading had no relation to the acquisition of "citizenship" or "burgesship."

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to  
1066.

acquisition of  
burgesship.

### 6. *Local Divisions of the Country.*

During the early period of the Anglo-Saxon dynasty, the country was first divided into counties, the kingly power being partially deputed to a sheriff in each county, and two courts committed to his jurisdiction, the "shire-court" and the "tourn of the sheriff;" every freeman within the county being compelled to attend the latter, for the purpose of swearing allegiance to the king.

As population increased, it was deemed a public grievance that, a vast body of persons should have to forsake their residence in order to attend the sheriff's tourn; and the king, as the head of the executive power, granted to such inhabitants a court, commonly known by the name of the "lect," at which they were bound to perform the suit and service which they had been accustomed to do at the tourn of the sheriff. This local government, and exclusive jurisdiction apart from the county, being the origin and foundation of boroughs; and from the laws of Canute it appears that all boroughs had one law, and the other Saxon regulations also establish that fact.

Origin of  
boroughs.

All boroughs  
had one law.

It should likewise be observed, that the counties were subdivided into hundreds, tythings, lathes, and wapentakes; and boroughs, where their extent rendered it necessary, into "wards."

Subdivisions of  
counties and  
boroughs.

### 7. *Municipal Police.*

The local administration of justice, the promotion of permanent residence, and the preservation of the peace, were the chief objects of the Saxon police.

The local divisions of shires and boroughs had their presiding officers<sup>1</sup> and separate jurisdictions. The "caldorman" at first was the presiding officer in both; but subsequently the more specific names were applied to the king's officer in each,—of "shire-reeve" for the county, and "port-reeve" for the borough.

<sup>1</sup> Wilk. Leg. Sax. 9, 12, 48, 49, 54, 55.

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to  
1066.

Administration  
of justice.

The local administration of justice was effected by the "reeve" in the folc-mote; which, in after-times, was in the counties called the "shire-gemote," or "sheriff's tourn," and in boroughs the "burgh-mote," or "court-leet," of the borough<sup>2</sup>; his duty consisted in preserving the king's peace, prosecuting and punishing "murder," "rapine," and "wrong," and making them who committed such offences, responsible to justice for their conduct<sup>3</sup>.

Every freeman  
bound to be forth-  
coming at all  
times.

Every freeman was bound by his oath, and by his pledges in the "folc-mote," to be forthcoming at all times, to do what justice required of him<sup>4</sup>. The freemen in the "borough-gemote" attended, and swore for themselves, finding their own pledges; the "villains" were answered for by their lords in their own courts: and if any freeman did not attend, and "put or set himself in pledge," he was outlawed<sup>5</sup>.

And to submit  
himself to the  
jurisdiction of  
the hundred,  
decenna, or  
borough.

It is evident that every freeman, in order to be "law-worthy," *i.e.*, taking upon himself the burdens and responsibilities of the law, and by those means entitling himself to its privileges, was bound to submit himself to the jurisdiction of the "hundred," "decenna," or "borough;" and if, after twelve years of age, he neglected so to do, he became subject to punishment for his default. So that, by these institutions, a freeman (or *liber homo*) was, as regarded his own rights, *entitled*, and, as related to the public, *bound* to perform the duty of putting himself under pledge, and security by oath, to abide by the law,—a system which existed till modern times<sup>6</sup>.

Maintenance of  
private rights.

The domestic peace of every individual was promoted by strong laws against trespasses in his house or lands, and the householder was responsible for the due regulation of his house, and the conduct of his guests or inmates; at the same time he could not receive a "foreigner" or "stranger" into his house for more than three days, unless he had previously

<sup>2</sup> Wilk. Leg. Sax. 39, 41, 54, 55.

<sup>3</sup> Ibid. 9, 12, 39, 41, 48, 49, 50.

<sup>4</sup> Ibid. 69, 103.

<sup>5</sup> Ibid.

<sup>6</sup> The enrolment of the inhabitants in every district, as practised by the Anglo-Saxons, seems so practically useful, and so obviously to be necessary, that we cannot be surprised at its having been part of our law. Some arrangement of that kind is to be found in almost every stage of man's existence, and in every part of the world. In the Mosaic law,—where the tribes are classed and taxed. In the Athenian law,—where all who were of certain age, and not excluded by any personal fault, were enrolled. In the Roman law,—where such a system formed a considerable head of the institutions of that people: not to mention the numerous analogous instances to be met with in the accounts of modern travellers, even amongst the most uncivilised nations.

served him as a follower; and prohibitions, enforced by fines, were directed against the harbouring of fugitive villains.

Bail was given for prosecutions and defences; wrongs were punished by fines to the state, with compensation to the aggrieved: every class having a fixed pecuniary value, by which they were respectively estimated, called his "were," also another called "mund," by which the value of his social peace was guarded; and several enactments existed against judges for illegal punishments.

The reputation of a good character was almost imperative, because the Saxon principle respecting accusations was, that of the accused producing a certain number of his neighbours who swore to their belief of his innocence; but, if convicted of perjury, they were ever disqualified from giving evidence.

Vagrancy was prohibited; commercial transactions were required to be public in the presence of witnesses<sup>6</sup> appointed for that purpose; and fairs and markets were allowed either by public or royal charter; tolls and payments to those entitled to receive them accompanied their sales; tolls also were levied on the high roads on those who passed with traffic; but the observance of Sunday, as a day of rest from all worldly labour, was strictly enforced<sup>7</sup>, and every man was ordered to perform to others the right that he desired to have himself.

If justice was denied in the county and hundred courts, an appeal lay to the king; but if the cause was brought before the king in the first instance, the plaintiff incurred a fine. No man was permitted to seek justice from the king till he had failed in obtaining it at home; and no one was to apply for justice to the king till he had been denied justice in his hundred<sup>8</sup>.

It is impossible to refrain from eulogizing the freedom and security of the Saxon institutions; and Alfred, perceiving the cordial and unanimous feeling in favour of their continuance, which pervaded all classes who were subject to their restraints, collected the laws upon which they were founded: the introductory chapter to which collection he concludes with the following declaration, that "he had collected together and

A. D. 864  
to  
1066.

Bail given for  
prosecutions;  
wrongs punish-  
able by pecuniary  
fines.

Necessity of  
possessing a good  
character.

Prohibition  
from vagrancy;  
publicity of  
commercial  
transactions.

Observance of  
Sunday.

Denial of jus-  
tice justified an  
appeal to the  
king.

Freedom and  
security of the  
Saxon institu-  
tions.

<sup>6</sup> Wilk. Leg. Sax. 9, 48. Ll. Ina, s. 25. Ll. Edw. Sen. s. 1. Ll. Ethelred.

<sup>7</sup> Ll. Ina. Ll. Guthrun, s. 7. Judicia Civitatis Londonie. Supplement to the Laws of Edgar.

<sup>8</sup> Ll. Edgar, c. 2, s. 2.

A.D. 564  
to  
1066.

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committed to writing many of those things which his ancestors had observed, and which he approved; and, with the advice of his 'witan,' had neglected many of them which he did not approve;" and that "he had not dared to attempt to commit to writing any of his own, for it was unknown to him what might be satisfactory to them who succeeded him. But whatever he could find, either in the days of 'Ina,' 'Offa,' or 'Ethelbert,' which appeared to him just, he had adopted, and the rest he had neglected."

The principle  
by which Alfred  
was actuated, in  
his legislative  
capacity.

The principle upon which Alfred acted in his legislative capacity, was permitting the continuance of theoretically defective laws, rather than destroy the foundation upon which all laws depend; viz., respect for established authority,—which sudden changes, even for the better, are apt to undermine, and any deficiency in the theory of his laws was more than counterbalanced, by the equitable and ready dispensation of them in practice: instead, therefore, of introducing new machinery, which, however theoretically improved, would not have practically answered in ignorant hands, he contented himself with making that which he had work well, by his unremitting care and vigilance.

## CHAPTER II.

## THE NORMAN ERA.

A. D. 1066—1154.

WILLIAM I.—WILLIAM II.—HENRY I.—STEPHEN.

## SECTION I.

WILLIAM I., Jan. 5, A. D. 1066,—Sept. 9, A. D. 1087.

## 1. Maintenance of the Saxon Institutions.

- |                                 |                            |
|---------------------------------|----------------------------|
| 2. Tenure of Lands.             | 6. Domesday.               |
| 3. Laws of William the First.   | 7. Sac and Soc defined.    |
| 4. Administration of Justice.   | 8. Legislative Assemblies. |
| 5. Ecclesiastical Jurisdiction. |                            |

1. *Maintenance of the Saxon Institutions.*

THE memory of no individual has received such unmerited abuse as has been heaped upon that of William I.; whether such abuse was wilful in its malignity, or sincere in its ignorance, is not worthy of inquiry, for the existing records of that period irresistibly establish its gross injustice.

Unmerited  
abuse of Wil-  
liam I.

William I. claiming a lawful title to the crown<sup>1</sup>, was naturally bound to uphold and respect the Saxon institutions; and we therefore find he collected, revived, confirmed, and improved the laws of the Saxon kings who had preceded him; and the collection of the laws of Edward the Confessor, and

Confirmation  
of the Saxon  
laws.

<sup>1</sup> The memory of Edward the Confessor appears to have been treated with the greatest respect throughout the Survey. In two instances he is termed "gloriosus rex Edwardus." (Tom. ii. fol. 416 B. 425 B.)

Throughout Domesday, Harold is constantly spoken of as the usurper of the realm,—"*quando regnum invasit.*" (Tom. i. fol. 38.) Once only, at Sudbertune in Hampshire, it is said, "*quando regnabat.*" (Ibid.) Of William I. it is as constantly said, "*postquam venit in Angliam.*" Once only does the expression occur, "*postquam W. rex conquistavit Angliam.*" (Compare Script. Norm. Antiq. a Duchesne, 204.)

*Haroldus invasit* is also the language of the Chartulary of Battle Abbey,—"Anno ab Incarnatione Domini M.LXVI, Dux Normannorum nobilissimus Willelmus cum manu valida pugnatorum in Angliam transnavigavit, ut regnum Angliæ, sibi a suo consanguineo Rege Edwardo dimissum, de manu Heraldi, qui illud *tirannica fraude inuaserat*, abstraheret." (MS. Cotton, Domit. A. ii. fol. 21. MS. Cotton, Claud. C. ix.)

And William Rufus, in an instrument which will be found in the last edition of Dugdale's Monasticou, (3 vol. 377,) speaks of his father's "*hereditary right*" to the throne of England.

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the enactment of his own laws, evince his anxiety to govern his subjects in accordance with their ancient freedom<sup>2</sup>, and at the same time afford an ample refutation of those flippant assertions, by which his memory has been so causelessly traduced.

Acts of tyranny.

It must, however, be confessed that, upon many occasions, he committed apparent acts of tyranny; but it should be remembered that the descendants of all those who adhered to Harold, and who were dispossessed of their properties, must have been his powerful and inveterate foes, and that his reign was continually agitated with schemes to overthrow his government<sup>3</sup>, and therefore such acts might be justified upon the grounds of political necessity; for if he had acted otherwise, he might have lost his crown, and involved the kingdom in greater calamities than those which it actually experienced.

Anxiety for  
Saxon institu-  
tions.

The Normans and other foreigners who aided William I. in acquiring the crown, neither formed the great population of the country, nor expelled the mass of the former inhabitants. The invaders were comparatively few in number, and very early intermarried and mixed with the greater mass, and assumed with the Saxon inhabitants the general name of "English;" and the anxiety of the invaded, from the beginning of the Norman invasion, to retain the Saxon laws and form of government, was, by degrees, felt in common with them by such of William's adherents as were settled in England; which was illustrated, after a short period, by the exchange of property in Normandy for property in England, by those resident in England, and particularly the castle of Tovebrig, or Tenebrige, the residence of the Clare family.

Norman barons  
and chiefs a  
source of great  
disquietude.

If the king had been desirous of governing the kingdom by his sword alone, if he had been the tyrant which has been represented, he would with his army have maintained exclusive possession of a division of the country, in order more effectually to oppress the natives, and repress their aggressions; but, in truth, the Norman barons and chiefs were to him a source of greater disquietude than the Saxons, which is evinced by the fact, that the large grants of lands which

<sup>2</sup> *Legem 57 annis sopitam excitavit—excitatum reparavit—reparatum decoravit—decoratum confirmavit—et confirmata vocata est lex sancti regis Edwardi.* Wilk. Ll. Sax. 216.

<sup>3</sup> *Pict.* 144, 145. *Orderic*, 189, 303, 304, 318, 349. *Lanfranc* ep. 318. *Chron. Sax.* 187. *Flor.* 641. *Malm.* 60. *Ælnoth*, Vit. Can. xiii. *Chron. Petro*, 51. *Saxo*, 217. 1 *Hume*, 240, 242, 248, 262, 272. 1 *Lingard*, 385, 440—447.

were made to them, were generally dispersed in different parts of the kingdom; so that but in few instances, had one man a great influence in one place, and wherever a more extensive grant was made in one place, it seems to have been generally on the borders of Wales, or in the north, where the proprietors would have to contend with foreign foes: therefore it was the policy of William to conciliate the Saxons.

It should likewise be remembered, that the northern tribes were all propagated from the same original stock, so their institutions, though diversified by time, climate, and accident, bore a strong resemblance to each other; and the customs of the Normans were readily amalgamated with those of the Anglo-Saxons: and of all the feudal services enforced by the Normans, there is not perhaps one, of which some obscure traces may not be discovered among the Anglo-Saxons<sup>4</sup>.

That the strongest analogy existed between the laws of England and those of Normandy, is proved by a comparison of "Glanville" with the "Grand Coustumiere of Normandy." The similarity does not alone subsist in matters of essential justice, which are, or ought to be, the same in all countries, but in the rules of descents, the terms of limitations, the forms of writs, and many other things of an indifferent nature, which could neither have arisen from necessity, nor from accident<sup>5</sup>.

In fact, the outlines of the English Constitution are not very different at this day from what they were in the reign of William I.; but the powers which were then universally acknowledged, and the spirit of the old institutions, have been since more minutely applied to the detail of administration, and adapted to the subsequent variations that have occurred in the mode of living, and in the condition of individuals.

## 2. *Tenure of Lands.*

It appears from the Saxon laws, that a considerable portion of the land in England, was held under the lords by persons of a greater or less degree in bondage, owing services either of a military, or of an agricultural or civil character; and that manumission from these services, was an object of great desire to such dependants.

There appears no solid reason for thinking, that the material parts of the feudal tenure, even as exercised by the Normans,

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Northern  
tribes propagated  
from the same  
original stock.

Analogy be-  
tween the laws  
of England and  
Normandy.

Outlines of the  
English Consti-  
tution not very  
different at this  
day from what  
they were in the  
reign of Wil-  
liam I.

Tenure of lands  
under the Saxon  
laws.

Feudal tenures  
existed in Eng-  
land during the  
Saxons.

<sup>4</sup> 1 Lingard, 436. Leg. Sax. 219. Ingulph. 88. Hoveden, 343.

<sup>5</sup> Hale, Hist. Com. Law, 120. 6 Henry, 49.



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did not exist in England before their arrival, particularly when it is observed that, a considerable portion of the lands entered in Domesday are stated to be held by the same tenure, at the same rent, and subject to the same services as they were in the time of Edward the Confessor; and the internal evidence of Domesday bears no reference to any simultaneous surrender of former tenures, and re-grant of the same lands as feudal.

Freedom of Saxon institutions might have abated the rigour of the feudal system.

The free spirit of our Saxon institutions, the manner in which they encouraged the manumission of bondmen, and the acquisition of freedom, might in some degree have abated the rigour of the feudal system, which, being borrowed from the north of Europe, might have been continued with undiminished, if not increased tyranny, among the Normans; and thus they might have brought over to this country some of the most severe provisions, and the heavier services of their law, but they could not have been numerous, nor could they now be defined, or pointed out with any considerable accuracy.

Normans introduced new provisions as to tenures.

The Normans, in all probability, introduced some new provisions, and attempted more, as appears by the conclusion of the compilation of the laws of Edward the Confessor, and is in a great degree established by the fact, that those laws had for a length of time been neglected; and that it was a question between the Normans and the English, whether they should be restored or not. But the fact of their having been restored is decisive to show, that no great change was ultimately allowed to prevail, and that the general system of the laws continued much the same under the new dynasty of the Normans, as it had been under that of the Saxons, with the exception of a few usurpations, which might have been effected from time to time by some of the more powerful Norman barons, or were introduced by the tyrannical and violent successors of William I.

Temporary adoption of the Norman system.

The temporary adoption of the Norman system, and the subsequent restoration of the Saxon, may account for those crude assertions and fanciful theories, relative to the introduction of the Norman tenures, which have been assumed as facts, and may at the same time afford a solution of the question<sup>1</sup>.

Lay fecs.

Those freehold tenures held immediately of the crown, after the completion of the conquest, which were deemed lay-fecs,

<sup>1</sup> M. and S. Hist. of Boroughs, 69, et seq.

seemed to have consisted of tenures by "knight service," tenures by "serjeanty," and tenures of "lands of the king's demesnes," paying only some certain rent, or render<sup>2</sup>.

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The tenure by "knight service"<sup>3</sup> was by render of certain services of one or more knights, completely armed and accoutred for war, with their horses and attendants, or a portion, as a half, a third, or a sixth of such service<sup>4</sup>; and this was military tenure<sup>5</sup>.

Tenure by knight service.

Tenure immediately of the crown by "serjeanty" was by performance of some service immediately to the king; and this service was of two sorts. That denominated "grand serjeanty," consisted generally of some service immediately respecting the king's person or dignity; as to carry the king's standard, to be his constable or marshal, his butler, chamberlain, or some other similar service, or indeed any service in attending the king's person, or other service to be performed about the king's person<sup>6</sup>.

Tenure by serjeanty.

Grand serjeanty.

The service of "petit serjeanty" of the crown consisted in some inferior specified service, not strictly military or personal to the king. Grand serjeanty was deemed a military service; but petit serjeanty was of an inferior description, and was esteemed of that species of tenure called "tenure in socage," a term applicable to all freehold tenure of the crown, or of others, which was not a military tenure.

Petit serjeanty.

It should also be observed, that "tenure per baroniam" was generally a tenure by military service merely; though in consequence of the charter of William I., Henry I., Henry II., and the great charters of John and Henry III., no charge could be legally brought on land holden by such tenure beyond the service-deed, (except the ordinary aids mentioned in the great charters<sup>7</sup>;) without the consent of the tenants, who were therefore to be summoned for the purpose of granting an extraordinary aid, as required by the charters of John.

Tenure per baroniam.

<sup>2</sup> First Report Dig. Peerage, 31, et seq.

<sup>3</sup> Spel. Gloss. 219. Mirrour, c. 2, s. 27.

<sup>4</sup> 2 Inst. 596. Stat. West. 1, c. 36. Stat. de Milit. 1 Edw. II. Co. Litt. 69. Pasch. 3 Edw. I.

<sup>5</sup> 4 Inst. 192. <sup>6</sup> Litt. s. 153, 154, 156, 158; 2 Inst. 233.

<sup>7</sup> The occasions on which these aids were demanded and granted, were three:—1. To make his eldest son a knight. 2. To marry his eldest daughter. 3. To ransom his person when he was taken prisoner in war. The rate of these aids was unsettled, but averaged one mark, or one pound, for every knight's fee.—Spelman. Du Cange, Gloss. voc. *Auxilium*. Madox, Hist. Exch. c. 15. Glanvil, lib. 9, c. 8. Bracton, l. 2, tr. 1, c. 16, s. 8. 2 Inst. 233. Phillip's Life of Pole, i. 223.

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Lands holden by any of those services of the king were hereditary, and considered as illustrious, owning no superior but the king; and tenure by "grand serjeanty," as well as tenure by "knight service," was deemed a military tenure, and subject in the same manner to the incidents of military tenure; namely, the custody and marriage of the heir, if within age at the death of the ancestor, and payment of relief on succession to the inheritance, if the heir happened to be of age, at the death of the ancestor.

Lands holden by knight service and grand serjeanty, when seized by the king.

On the death of the ancestor, lands holden by "knight service," and by "grand serjeanty," were, upon inquisition finding the tenure and the death of the ancestor, seized into the king's hands<sup>8</sup>. If the heir appeared by the inquisition to be within the age of twenty-one years, the king retained the lands till the heir attained twenty-one, for his own profit, maintaining and educating the heir according to his rank<sup>9</sup>. If the heir appeared by the inquisition to have attained twenty-one, he was entitled to demand livery of the lands by the king's officers, on paying a relief<sup>10</sup>, and doing fealty and homage. The minor heir attaining twenty-one, and proving his age, was entitled to livery of his lands, on doing fealty and homage, without paying any relief.

Tenure of lands in petit serjeanty, not deemed military tenure.

The tenure of lands holden in "petit serjeanty" of the king was not deemed a military tenure, and was not subject to the prerogative of "ward," "marriage<sup>11</sup>," or "relief;" but, on proof of the tenure, such lands were to be delivered on the death of the ancestor to the heir, if of age, and if not, to his guardians. Freehold tenants of the demesne of the crown were not deemed to hold by such honourable tenure, but were free, and their tenure was hereditary, paying such rent in money, or in gross, as was reserved upon their respective tenures<sup>12</sup>.

<sup>8</sup> Staund. Prerog. 12. Stat. Marl. c. 16. 17 Edw. II. c. 3. 2 Black. Com. 66.

<sup>9</sup> Craig, de Feud. l. 2, c. 2. Spelman, Reliquiæ, 25. Gloss. voc. *Warda*. Madox, Hist. Exch. c. 10, s. 4. Glanvil, l. 7, c. 9. Litt. s. 103. Co. Litt. 77. 4 Inst. 198. Stat. 32 Hen. VIII. c. 46. Stat. 16 Car. I. c. 20.

<sup>10</sup> Du Cange, voc. *Relerium*. Glanvil, lib. 9, c. 4. Madox, Hist. Exch. c. 10, s. 4. Wright, 99. Ll. Wil. I. c. 22, 23, 24. 2 Roll. Abr. 514. Litt. s. 112.

<sup>11</sup> Du Cange, voc. *Maritagium*. Glanvil, l. 7, c. 9. Madox, Hist. Exch. c. 10, s. 4. Bracton, lib. 2, c. 37, s. 6; c. 38, s. 1; et lib. 9, c. 4, 9, 12. Gr. Coust. 95. Co. Litt. 62 B.; 2 Inst. 90, 92, 202, 204; 5 Rep. 126; 6 Rep. 70. Wright, 97.

<sup>12</sup> Du Cange, voc. *Scutagium*. Madox, Hist. Exch. c. 16.

There were also tenants of the "king's demesnes," who were mere occupiers of the land as farmers, without any certain term,\* or for terms of years only; and these were deemed villain-tenants of the king's manors, holding according to the customs of the several manors, such as were afterwards termed "tenants by copy of court-roll," or "copyholders." All these were subject only to the charges affecting their respective tenures; the first according to the reservations in the demises made to them; the copyholders according to the customs of the several manors of which they were tenants; their tenures being hereditary, or qualified, according to the customs of their respective manors: but all were liable to tallage, or to be taxed according to their ability for the benefit of the crown.

When lands, which had been in the hands of a mesne lord, came by forfeiture or escheat to the crown, the several persons who had been tenants of the mesne lord, held of the crown as they had done of their former lord.

The same tenures which might be of the sovereign, might be also of his subjects; except the tenure by "grand serjeanty," which seems to have been peculiar to the crown.

The tenants by military service might enfeoff others to hold of them by military service; that is, to perform for them the service required by their tenures, which they could not personally perform. Thus if lands were holden of the crown by the service of twenty knight's fees, the tenants of such lands might enfeoff others of parts, to hold by the service of any number of knight's fees, more or less than twenty; and many such subinfeudations were made. Sometimes the original grant from the crown to its immediate tenant was partly of lands in demesne, and partly of services; that is, of lands before granted to be holden by certain services, as of so many knight's fees, in which case the crown could convey to its grantee only the superiority, and the services due from such lands.

So persons holding of the crown might grant lands by the service of some serjeanty to themselves, or by some free tenure, such as that called "tenure in socage;" or the lord of a manor might grant tenelements to be holden according to the custom of the manor: but this could properly only be of lands which had been customarily so granted, though probably many lands holden by copyhold tenure were granted to hold

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Tenants of the  
king's demesnes.

Tenants of  
mesne land, not  
dispossessed by  
forfeiture or  
escheat.

Tenures which  
might be of the  
subject.

Tenants by mili-  
tary service,  
might enfeoff  
others to hold of  
them.

Tenants of the  
crown, might  
grant lands as  
tenure in socage.

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by that tenure long after the conquest, notwithstanding they had not been before so holden.

Tenants by bur-  
gage tenure.

There were also tenants by "burgage tenure," both of the crown and of mesne lords, of tenements in cities and boroughs, holden by certain services or acts:—the "cives" and "burgenses," mentioned in Domesday, being the occupiers of such tenements;—*i. e.*, the inhabitant householders within their respective cities and boroughs; but it does not appear that at that time, the body of citizens or burgesses of any city or borough held the city or borough itself of the crown, though the crown afterwards frequently granted a city or borough to the citizens or burgesses to be holden of the crown, paying a rent, and receiving the profits before due to the crown: and a grant of a city or borough to its citizens and burgesses in fee farm, did not preclude the king's right to tallage, but the city or borough still remained equally liable with the king's demesnes.

Tenants in  
capite.

Thus it appears that all the land in the kingdom, esteemed lay-fee, was holden by the actual possessor immediately or mediately of the crown; and those who held immediately under the crown, were called his tenants *in capite*.

### 3. *Laws of William the First.*

These laws commence by ordaining that allegiance should be sworn to the king.

Lands and pos-  
sessions to be  
free from unjust  
exaction.

Every Frenchman who was in England at the time of Edward the Confessor, partaking of lot and scot, was to pay according to the laws of England, and all free men were to have and hold all their lands and possessions, free from all unjust exaction, and all tallage, so that nothing should be taken from them but their free service, which they ought of right to do to the king as ordained for them, and granted to them by hereditary right for ever, by the "common council" of the kingdom.

Boroughs to be  
watched.

All cities, boroughs, castles, hundreds, and wapentakes were to be watched every night, and protected in turn against evil doers and enemies, as the sheriffs, aldermen, reeves, bailiffs, and the king's ministers, should the better provide by their "common council" for the benefit of the kingdom.

True weights and  
measures.

There were to be throughout the kingdom true weights and measures, as the king's ancestors had ordained.

All free men were to be as sworn brothers, for the defence

of the kingdom, the preservation of the peace, and the dignity of the crown.

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The Saxon provisions for selling in the presence of witnesses and with pledges, are repeated.

System of  
pledges.

There was to be no market or fair, unless in cities, or close boroughs surrounded with walls, in castles, and in the safest places, where the customs and the king's right might not be defrauded; and it was stated that castles, boroughs, and cities were established for such purposes; as well as to insure the safety of the people of the land, and the defence of the kingdom; and they were therefore to be preserved in full integrity.

Markets.

Provisions for the ordeal and trial by battel occur, after which it is expressly declared *that all shall have and hold the laws of King Edward in all things.*

The ordeal, &c.

It was also enacted that every man who wished himself to be accounted free should be in pledge, in the manner before prescribed by the Saxon laws.

Freemen to be in  
pledge.

No person was to be allowed to sell his man out of the country, and if any one wished to make his bondman free, the mode of doing it before the sheriff is minutely pointed out.

Grants of free-  
dom.

Every lord was to be security for his villain, and, if the villain were not purged from all offence, the lord was to produce him to do right in the hundred:—it is thus established that no one was exempt from the jurisdiction of the sheriff, but all persons as being within the shire were liable to the sheriff's tourn and hundred courts.

Lords respon-  
sible for their  
villains.

Jurisdiction of  
the sheriff.

And the terms "scot and lot" are emphatically called the customs of England.

Scot and lot.

It was the essence of the laws of William I., and analogous to those of the Saxons, that every freeman should contribute to the public charges by paying, with all other freemen, his "scot;" and in the same manner take his share with the other freemen in the public personal burdens or "lot," by performing, in his turn, such military and civil duties, as were uniformly imposed upon all,—as serving in the wars, keeping watch and ward, and filling in succession the public offices which were required for the state generally, or locally for the borough:—thus it was that the personal union of burden and benefit, constituted the "liber homo" of the common law<sup>1</sup>.

The liber homo  
of the common  
law.

<sup>1</sup> Vide *Waggoner's Case*, 8 Co. 241. Stat. 23 Hen. VIII. c. 5, s. 8; 33 Hen. VIII. c. 9. 2 *Luders*, 98. Stat. 11 Geo. I. c. 18, s. 9.

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1066—1087.

#### 4. *Administration of Justice.*

Whatever may have been the effect of the change of landed property, and of its tenure, by this king, however it may have altered that part of the Saxon institutions, which related to its legislative assemblies, the local administration of justice and municipal police, although improved, were essentially unchanged.

Appointment of  
Justiciaries.

That part of the Saxon institutions, by which the "Witena-Gemot" exercised the duties of a supreme court of judicature, was considered by the Normans, not suited to the increasing wants of society, and ill adapted for discussing intricate points of law, or determining nice and difficult questions of property; besides, its members were unable to devote their entire time to judicial questions.

The first improvement was made by William I., who sent his justiciaries, in cases of difficulty or importance, to preside in the county courts, where the cause was to be tried.

Court of Exchequer  
established.

The next alteration was a court of Exchequer, in imitation of that established in Normandy, but on a different and inferior footing<sup>1</sup>. The Exchequer in Normandy was the sovereign court to which appeals were made, from all inferior courts and jurisdictions. The English Exchequer was a court for the private concerns of the crown, being to receive and disburse the king's revenue, and to settle accounts with his sheriffs and bailiffs. It was his chamber of accounts; and its principal business was to superintend, manage, and improve his revenue<sup>2</sup>.

Judges of the  
Exchequer.

Its original members were, the chief justiciary, who, in the absence of the king, acted as president of the court, and certain barons, selected from the "common council" of the realm, on account of their rank and superior wisdom<sup>3</sup>.

They assembled in the palace, and their court was therefore termed "Curia Regis," with the addition of "ad Scaccarium," on account of a chequered cloth that covered the table at which they sat.

<sup>1</sup> Dialog. de Scaccar. lib. 1, c. 4.

<sup>2</sup> It is thought that William I. instituted the Court of Exchequer, but there is no record of its existence in Madox, until Henry I. 1 Madox, Exch. 209.

<sup>3</sup> "Majores de discretiores in regno, sive de clero sint sive de Curia." Dialog. de Scaccar. lib. 1, c. 4.

From being employed to receive the king's revenue, and to settle with his officers, it was a natural and easy transition for the members of this court to judge and determine the questions that arose in the course of their proceedings<sup>4</sup>; it being remembered they were not only barons of the realm, but the most distinguished for their skill and prudence<sup>5</sup>.

When judicial questions were brought before the "common council," they were the persons best qualified to guide the opinions and direct the judgment of its other members; so that gradually, and perhaps insensibly, its ordinary judicial business fell into their hands. Many of them held offices at court, which retained them about the person of the king, when the other members of the common council were absent. They attended him abroad in his expeditions, and followed him in his progresses through the kingdom. On such occasions, when complaints were laid before him, they heard the parties without delay, examined the merits of their complaint, and, in ordinary cases, gave judgment, without waiting for the stated meetings of the "commune concilium," or convoking an extraordinary assembly. This practice, originating in convenience, and confirmed by usage, was at length established by law.

At what time, and by what authority, a court, distinct from the Exchequer, and different from the "common council," was appointed to sit in the palace, for the purpose of hearing and deciding the causes brought before the king, is unknown. The practice probably began when the barons of the Exchequer extended their jurisdiction from causes touching the revenue, to other matters affecting the rights and properties of the subject. It is a confirmation of this conjecture, that the earliest judges of this court, of whom any memorials have been preserved, were also barons of the Exchequer<sup>6</sup>.

WILLIAM I.  
1066—1087.

Mode by which  
their authority  
was increased.

Uncertainty as to  
the time and  
authority by  
which a court sat  
in the palace, dis-  
tinct from Ex-  
chequer.

### 5. Ecclesiastical Jurisdiction.

Under the Anglo-Saxons, the members of the Witen-Gemot, exclusively, made such laws as they conceived requisite for the maintenance of all ecclesiastical institutions, and

Witen-Gemot  
absolute in eccle-  
siastical regula-  
tions.

<sup>4</sup> Dialog. de Scaccar. lib. 1, c. 4.

<sup>5</sup> Fleta, lib. 2, c. 26.

<sup>6</sup> Bened. Abb. 317, 266. 1 Madox, Exch. 96. 35 Edinb. Review, Art. 1, p. 1, passim.



**WILLIAM I.  
1066—1087.**

Peter's pence  
presented by the  
Saxon princes.

William refuses  
to do homage to  
the pope for his  
kingdom.

Limited acknow-  
ledgment of the  
pope.

Royal assent re-  
quired to enforce  
the decisions of  
national or pro-  
vincial synods.

The king forbids  
excommunication.

never acknowledged any other temporal authority: but the Saxon princes had been accustomed to forward a charitable donation to the pope, called "Peter's Pence," similar to that which was established in Gaul by Charlemagne<sup>1</sup>.

Gregory, an impudent and scheming pontiff, interpreted the present of Peter's pence, as a badge of subjection acknowledged by the kingdom, and called upon William I. to do him homage as its sovereign.

The king promised to continue the "present," but to the demand of homage he absolutely refused, stating he had never promised it himself: *his predecessors had never performed it*: nor did he know of any other ground on which it could be claimed with justice<sup>2</sup>.

Neither would William permit the authority of any particular pontiff to be acknowledged in his dominions, without his previous approbation; and directed that all letters issued from the court of Rome should, on their arrival, be submitted to his inspection.

Though he zealously concurred with Archbishop Lanfranc in his endeavours to reform the manners, both of the clergy and the laity, yet so jealous was he of any encroachment on his authority, that without the royal license, he would not permit the decisions of national or provincial synods to be carried into effect.

And after the separation of the ecclesiastical courts<sup>3</sup> from those of the hundred, he enacted such laws as were necessary to support the jurisdiction of the former, but, at the same time, forbade them either to implead or to excommunicate any individual, holding in chief of the crown, till the nature of the offence had been certified to himself<sup>4</sup>.

## 6. *Domesday.*

William I., in order to acquire an exact knowledge of the possessions of the crown, the names of the landholders, and the military strength of the country; to afford the means of increasing the revenue in some cases, and of lessening the

<sup>1</sup> Greg. VII. ep. ix. 1.

<sup>2</sup> Selden, *Spicil. ad Eadmer*, p. 4.

<sup>3</sup> 2 Millar, 127 et seq. 3 Black. Com. c. 5. 6 Henry, 25.

<sup>4</sup> Ibid. 6, 164. Baron. ad ann. 1068, n. 1, ad ann. 1079, n. 25. 1 Hume, 279, 271. 1 Lingard, 454, 455.

demands of the tax collectors in others<sup>1</sup>, and to provide a register of appeal for those whose titles to their property might be disputed, ordered, towards the termination of his reign<sup>2</sup>, the compilation of that record which is commonly called "Domesday;"—of itself an additional proof of his equity and justice.

WILLIAM I.  
1066—1087.

The inquisitors, upon the oaths of the sheriffs, the lords of each manor, the presbyters of every church, the reeves of every hundred, the bailiffs and six villains of every village, were to inquire into the name of the place, who held it in the time of King Edward, who was the present possessor, how many hides in the manor, how many carucates in demesne, how many homagers, how many villains, how many cotarii, how many servi, what freemen, how many tenants in socage, what quantity of wood, how much meadow and pasture, what mills and fish-ponds, how much added or taken away, what the gross value in King Edward's time, what the present value, and how much each freeman or sockman had or has. All this was to be triply estimated: first, as the estate was held in the time of the Confessor; then, as it was bestowed by King William; and, thirdly, as its value stood

The manner in which the inquiry was to be taken.

<sup>1</sup> Tom. 1, fol. 222, 299, 299 B.

<sup>2</sup> The exact time when the survey was undertaken is differently stated. The Red Book of the Exchequer seems to have been erroneously quoted, (Webb's Short Account of Domesday-Book, 1; Dissert. Pref. to Hutchins' Hist. of Dorsetshire, &c.) as fixing the time of entrance upon it in 1080; it being merely stated in that record, (in which the original of the *Dialogus de Scaccario* is found,) that the work was undertaken at a time subsequent to the total reduction of the island to William's authority.

From the memorial of the completion of this survey, at the end of the second volume, it is evident that it was finished in 1086.

Matthew Paris (fol. Lond. 1634, p. 9; see also Mat. West. fol. Francof. 1601, p. 229), Robert of Gloucester (ii. 473), the Annals of Waverley (Hist. Ang. Script. V. ed. Gale, fol. Oxon. 1687, p. 133), and the Chronicle of Bermondsey (Harl. MS. Brit. Mus. No. 231), give the year 1083, as the date of the record. Henry of Huntingdon (Script. ap. Savile, fol. Lond. 1596, p. 212), places it in 1084. The Saxon Chronicle in 1085. Brompton (Script. X. Twysd. 979), Simon of Durham (Ibid. 213), Florence of Worcester (fol. Francof. 1601, p. 641), the Chronicle of Mailros (1 Script. ap. Gale, 161), Roger Hoveden (Rerum Anglic. Script. ap. Savile, fol. Lond. 1596, p. 263 B), Wikes (Hist. Ang. Script. V. ed. Gale, fol. Oxon. 23), and Hemmingford (Ibid. 461), in 1086; and the *Xpodigina Neustrie* (Ang. IIib. Norm. Cambr. a vet. Scripta Gul. Camd. fol. Francof. 1632, p. 439), and *Diceto* (Script. X. Twysd. 487, 53; Baron Maseres, in the Notes to his "Excerpta ex Orderico Vitali," 559), in 1087. Vide etiam 1 Ellis on Domesday, passim, 4.

WILLIAM I.  
1066—1087.

Mode in which  
the returns were  
entered.

Returns framed  
of greater length  
than were requi-  
site.

Instances of pur-  
chases and mort-  
gage.

Owners not op-  
pressed for the  
formation of the  
valuation.

at the formation of the survey. The jurors were moreover to state whether any advance could be made in the value<sup>3</sup>.

The method generally followed in entering the returns was, first, to entitle the estate to its owner, always beginning with "terra regis." The hundred was next specified; then the tenant, with the place; and afterwards the description of the property.

The jurors, in numerous instances, framed returns of a more extensive nature than were absolutely required by the king's precept, and which will account, for the variety of descriptions in different counties<sup>4</sup>. In some counties, where the Exchequer Domesday was excerpted from the rolls, the irrelevant matter appears to have been struck out; while in others it was probably retained. The words also of the rolls were, for the most part, given in full, or but partially contracted; while, in the transcribed survey, an abundance of minute contractions were used, as if with an intention of compressing the whole into a form most convenient, for the purposes of courts of law<sup>5</sup>.

Care seems to have been occasionally taken even to enumerate purchases in the survey<sup>6</sup>, and there are various instances of mortgage<sup>7</sup>.

That there was no oppression in the valuation, even where owners of land refused to make their own return, is evident from more than one entry<sup>8</sup>. A remarkable instance of the equity attaching to the formation of the survey will be found in the account of the land at Brunfelde in Shropshire, belonging to the church of St. Mary, Shrewsbury<sup>9</sup>; and it is clear from the survey itself, that the inquisitors, in many instances, caused the restoration of property<sup>10</sup>; for it appears that title-deeds and charters were exhibited to the commissioners<sup>11</sup>. But a large portion of the forged Saxon charters which at this day exist, are to be referred to the period of the Domesday survey. They were fabricated by the monks in order to make the

<sup>3</sup> 1 Ellis on Domesday, 21.

<sup>4</sup> Vide Ingulphus, Chron. Robert of Gloucester, Brompton, Henry of Huntingdon, Knyghton, Hoveden, Florence of Worcester, Simeon of Durham, Matthew Paris, Matthew of Westminster.

<sup>5</sup> 1 Ellis on Domesday, 28.

<sup>6</sup> Tom. i. fol. 137 B, 242, 242 B.

<sup>7</sup> Ibid. fol. 170 B.

<sup>8</sup> Ibid. fol. 166 B, 170, 182 B.

<sup>9</sup> Ibid. fol. 252 B.

<sup>10</sup> Ibid. fol. 62, 58 B, 159 B.

<sup>11</sup> Tom. i. fol. 101 B; tom. ii. fol. 389 B.

titles to their property good, when the Norman commissioners came amongst them. Some had even forged seals, an appendage of Norman origin, at least for the authentication of legal instruments, which were introduced by Edward the Confessor<sup>12</sup>.

WILLIAM I.  
1066—1087.

There are seventy-eight places described in Domesday as boroughs; many of them are entered distinctly by themselves, before the *Terra Regis*, and the general return for the county, which proves that the boroughs were separate and distinct from the counties<sup>13</sup>.

Number of places  
described in  
Domesday as  
boroughs.

The entries in Domesday establish, that burgess-ship did not depend upon tenure<sup>14</sup>; because many burgesses are described as belonging to other manors<sup>15</sup>. If *tenure* was the basis of their right, they would have exclusively belonged to the manors, and would not be described as "burgesses of the boroughs," because they did not hold of them.

Burgess-ship did  
not depend on  
tenure.

But it was in respect of their responsible residency that they became burgesses, and it was those only who bore their share of the burdens of the place, or, according to the laws of the Saxons and William I.<sup>16</sup>, paid "scot" and bore "lot," were entitled to the privileges; those who from poverty or any other cause did not pay the charges, or serve the public offices of the borough, being excluded.

Those who paid  
scot and lot  
alone entitled to  
the borough pri-  
vileges.

<sup>12</sup> Domesday is also illustrative of ancient manners and customs; thus, there are instances of lands being granted by fathers for the support of their daughters in ecclesiastical establishments (tom. i. fol. 63, 59 B, 73), of lands held for three lives (ibid. fol. 46 B, 72, 175; 1 Hearne's edition of Hemming's Chartulary, 293), lands being in dower (t. n. i. fol. 59, 54, 168), a nuncupative will (ibid. fol. 177), the ancient method of giving *sesin* (ibid. fol. 177 B; ibid. ii. 110 B), allowances of liquor to be drunk at festivals by the religious in commemoration of their founders and benefactors, a custom pursued to this day among colleges and corporate societies (ibid. i. 206 B), the custom of a widow not marrying again till after her husband had been dead a year (ibid. ii. fol. 199; *LL. Ang.-Sax. Wilk.* 109. Vide Concilium Eboracense, 125); and of the marriage of ecclesiastics in Saxon times there is a remarkable memorandum in the notice of the manor of Plufelda in Norfolk (tom. ii. fol. 195); it is said, "*h. man accip. Almarus cum uxore sua antequam esset Episcopus; et postea tenuit in Episcopatu. Modo tenet Willielmus Episcopus;*" and in the account of Lincoln (ibid. i. fol. 336), the following entry occurs, "*Uxor Siwardi presbyteri.*"

<sup>13</sup> Wallingford, fol. 56 B; M. and S. Hist. Boroughs, 115, 131, 164, 217, 254, 255, 259, 263.

<sup>14</sup> Extracts and References to Domesday, cited M. and S. Hist. Boroughs, 78, 83, 84, 86, 114, 154, 481, et vide etiam 521, 526, 527, 930, 933, 1077. Bract. lib. 2, c. 8.

<sup>15</sup> M. and S. 159, 169, 164, 166, 175, 202, 203, 205, 207, 209, 214, 221, 239, 254, 259, 274, 278, 281, 289.

<sup>16</sup> Wilkins, *LL. Ang.-Sax.* 228.

WILLIAM I.  
1066—1087.

Non-residents  
had no local  
borough rights.

Castles and mer-  
chant guilds dis-  
tinct from  
boroughs.

Reeves and  
pledges men-  
tioned in Domes-  
day.

Privileges exclu-  
sively granted to  
the burgesses.

It would have been inconsistent with the whole system of the law at that time, if *non-residents* could have been burgesses; and therefore we find, throughout Domesday, that the burgesses were *resident*, and in that respect distinguished from the members of the merchant guilds, and of the trading companies, who might be non-resident.

Domesday also proves that, generally speaking, the castles were not within the bounds of the boroughs<sup>17</sup>: and the merchant guilds, and their members, were also distinct from the municipal jurisdiction of the town, from the borough rights, and the burgesses<sup>18</sup>.

The reeves of the boroughs are spoken of, as well as the shire reeves<sup>19</sup>; and the system of pledges, derived from the Saxon law, are expressly recognised<sup>20</sup>.

The privileges granted to the boroughs were claimed and exercised by the burgesses only, and no other class of persons is specified as entitled to them.

### 7. *Sac and Soc defined.*

Various authors have considered that the privileges "*sac*" and "*soc*," to which such frequent reference is made in Domesday, were characteristic of boroughs, and they have been thought to include both civil and criminal jurisdiction<sup>1</sup>. If it were so, they would probably have given the same rights that boroughs enjoyed: because places possessing them would then have had a perfect jurisdiction within themselves, and the sheriff would have had no right of interference. But many passages in Domesday establish that, this liberty gave only that civil jurisdiction, which the lord had over his tenants; extending only to questions connected with the holding of

Sac and soc gave  
only civil juris-  
dict

<sup>17</sup> Domesday, fol. 137. Inspec. Cart. 51 Henry III., Mem. 10, No. 4. 2 Hearne, Lib. Nig. 816. M. and S. Hist. Boroughs, 115.

<sup>18</sup> M. and S. Introd. xiv.

<sup>19</sup> Domesday, fol. 1, 2, 30, 56 B, 231, 235.

<sup>20</sup> Ibid. fol. 30. M. and S. Hist. Boroughs, Introd. xiv. pp. 99, 100, 192.

<sup>1</sup> The 22nd, 23rd, 24th, 25th, and 26th Sections of the Laws of Edward the Confessor respectively, define the meaning of *soc*, *sac*, toll, them, and infangthef;—the first two importing jurisdiction over the territory which belongs to the lord;—the third referring to the liberty of bringing and selling;—the fourth relating to the forfeiture of stolen goods;—and the fifth to the jurisdiction over thefts: concluding with the general statement, that those who have not these privileges, are to do right in the hundreds, wapentakes, and shires. Et vide etiam Bracton, lib. 3, c. 8.

their lands, and with what are ordinarily called "Common Pleas." This was enjoyed with almost every manor, and, in modern times, has been called the "Court Baron;" but it did not extend to criminal matters; therefore such manors were subject to the general interference of the sheriff as to pleas of the crown, which were within his particular jurisdiction at the tourn. The suitors had distinct duties at these respective courts,—the Tourn related to pleas of the crown, making ordinances for preserving peace, giving pledges for good behaviour, and the suitors binding themselves by oaths of allegiance to the king and the laws, which was called "suit royal," as due to the king and his crown:—whereas the service at the Court Baron, described by "sac" and "soc," related only to suit of court; "soc" being the liberty of separate and distinct jurisdiction, and "sac" the privilege of taking the issues and profits of the court.

WILLIAM I.  
1066—1087.

The court baron.

Suit royal.

"Sac" and "soc" were, generally speaking, at first only granted to the ecclesiastical bodies; and not the court leet, or exemption from suits of shires and hundreds, as in the case of Evesham, which received a charter\* from William I., granting "soc" and "sac;" and, as that place was not then a borough, it proves, contrary to the assumption of Brady, that these were privileges not peculiar to boroughs. On the other hand, some of the possessions of the church were altogether exempted from the jurisdiction of the sheriff, and had powers excluding his interference, in the same manner as the charters granted to boroughs. Thus Beverley had such a charter, but it was not made a borough till a much later period.

Soc and sac were at first only granted to the ecclesiastical bodies.

### 8. *Legislative Assemblies.*

After the accession of William I., and previous to the reign of John, there are no records from which any satisfactory conclusion can be deduced, to establish the powers or component parts of any assembly, which had an inherent right of exercising legislative functions; and it does not appear that the confirmation of the Saxon laws by William, extended to the convention of a legislative assembly, constituted according to any known law in use under the Saxon kings.

No records to establish the component parts and authority of the legislative assemblies.

\* 2 Dug. Mon. 582.

**WILLIAM I.  
1066—1087.**

Powers of legislation exercised by the crown and a selected council.

The constitution of the legislature essentially changed between A.D. 1066 and A.D. 1307.

Appellations of the assemblies convened by Wil-

It is however certain that, during the reigns of William I. and his successors, considerable powers of legislation were exercised by the crown, with the assistance of a selected council; but it has been conceived that more important subjects of legislation, and especially such as operated to charge property in the hands of individuals, not previously subjected by law to be charged, required a greater sanction<sup>1</sup>; and that such sanction was usually given by an assembly, for general purposes; and which must be deemed as having been the legislative assembly of the realm.

Whether that assembly had a settled constitution established by clear and express law, or founded in usage only; or whether its constitution depended in any degree on temporary circumstances; or whatever may have been at different times the characters, powers, and privileges of its several constituent parts, during the early periods of our history; it can scarcely be doubted that, during the long lapse of time from the accession of William to the close of the reign of Edward I., many circumstances materially affected the rights of persons who, at different times during that epoch, may have been deemed necessary members of the legislative assemblies of the realm, and especially of assemblies convened for the purpose of charging the people with extraordinary aids, or establishing important alterations in the general law of the land. At the termination of the period alluded to; which was one of progressive revolution, chiefly arising from the alterations that had taken place in landed property; persons who may have been previously entitled to be personally summoned as members of an assembly for taxation, may no longer have had such rights, but may have become either representatives or the constituents of representatives, by whom those rights were to be exercised; so likewise the constituents of the representative body in the legislative assemblies of the realm, may have become more numerous than they originally were; and many of those constituents may have been of a different description from those persons, by whom that representative body had been originally delegated, but it is impossible by reference to existing documents to remove the obscurity<sup>2</sup>.

William I. and his immediate successors convened assemblies, differently constituted, corresponding with the appel-

<sup>1</sup> Ford. N. E. tom. i. p. 1.

<sup>2</sup> 1 Rep. Dig. Peer. passim.

lations of "concilium," "magnum concilium," "commune concilium," et "commune concilium regni."

The persons convened to such assemblies have been described as "magnates," "proceres," or "barones:" sometimes the different ranks of the members assembled have been designated, as "archiepiscopi," "episcopi," "abbates," "priores," "comites," et "barones," to which the words "et alii magnates et proceres regni" have been occasionally added.

The rank of the archbishops, bishops, abbots, priors, and earls, seems to have been distinct from that of the persons styled "barones," when that word was added to the others; but when the words "barones," "magnates," or "proceres," were only used, persons of higher rank were included.

But there are no records to establish, whether the persons mentioned as "barones," "comites et barones," "magnates," or "proceres," formed the whole of the laity convened, having, with the prelates, legislative functions;—whether those styled "barones" were all of equal dignity, or what, if any, distinctions prevailed amongst them;—and whether, when the word "magnates," or the word "proceres," was added to the word "barones," it was used to describe persons not properly answering to the term "barones;" neither can it be correctly ascertained what was the extent of the legislative authority belonging to such assemblies.

Neither are there any documents to prove, whether the persons thus variously styled, and especially those styled "barones," had an hereditary title to the character of members of these assemblies as a dignity, in the sense in which that word is now understood, as applicable to the peers of the realm, and if as a dignity, whether as incident to their possessions, or as merely personal, proceeding from the grant of the crown to themselves or their ancestors; and whether they could demand a writ of summons to those assemblies as their right, communicating that right to their descendants, either as incident to, or distinct from, the title to their lands; or whether they were summoned from time to time according to the mere pleasure of the crown, especially if not assembled for the purpose of granting to the crown extraordinary aids, beyond the burdens charged by law on their respective lands, by the terms of their tenures; and whether they had any legislative right to impose burdens on others, and especially on those who did not hold lands of them mediately or im-

**WILLIAM I.**  
**1066—1087.**

William I. and his immediate successors.

Designation of the members who were convened.

Rank of archbishops and earls distinct from that of barons.

Legislative powers of the "barones," "comites et barones," "magnates," or "proceres," unknown

The title of the "barones" to act legislatively unknown.



WILLIAM I.  
1066—1087.

Year Book of  
Edward III. re-  
cognises a legis-  
lative assembly  
in the reign of  
William I.

mediately, or on those freemen who held no lands, but were only possessed of moveables.

In the Year Book of 21 Edward III.<sup>3</sup>, the substance of an ordinance of William I. is stated to have been "*ordone p le Roy et p L'Archevesque de Canterbury, et per tous les Evesques de la terre Contes et Barons.*"

This ordinance appears, from the expressions in the Year Book, to have been deemed in the reign of Edward III. an act sanctioned by the authority, as well as by the advice, of the archbishops, bishops, earls, and barons of the kingdom; and under the name of barons, the abbots and friars holding lands by military tenure may have been included.

No lay persons  
included except  
earls and barons.

As no lay persons besides earls and barons are noticed in the Year Book as having concurred in this ordinance, and it was treated as a law sanctioned by the proper authority, the entry in the Year Book may be considered as tending to show that, in the 21st of Edward III., the judges conceived that, in the reign of William I., the prelates, earls, and barons, with the king, had sufficient authority for such purpose; and it can scarcely be conceived that they intended to include the representatives of shires, cities, and boroughs, such as sat in Parliament during the reign of Edward III., under the word "barons."

Non-existence of  
legislative assem-  
blies.

To prove the "non-existence of legislative assemblies," an instrument in the Red Book of the Exchequer has been greatly relied upon<sup>4</sup>, but, in connexion with other records, it does not support the abstract proposition. This document is intituled, "*Mandatum Regis de judiciis episcopalibus a secularibus secernendis*," and which effected a known and important change in the law of the land, by separating the ecclesiastical and civil jurisdictions; it has been conceived that its general language imported an emanation from the king's authority alone, more particularly as one part was expressed in the strong words, "*Hoc eciam defendo et mea auctoritate interdico*;" but the writ giving notice of this innovation to the bishopric of Lincoln, says that it was made, "*communi concilio, et consilio archiepiscoporum meorum, et cæterorum episcoporum et abbatum et omnium principum regni mei*"<sup>5</sup>.

<sup>3</sup> Fol. 60, n. 7, tit. "Contempt."

<sup>4</sup> 1 Report Dig. Peer. 129. *Fœdera*, N. E. tom. 1, p. 3, et vide etiam *ibid.* tom. 1, p. 1.

<sup>5</sup> Selden, ad Eadmer, 167. 35 *Edin. Rev. Art.* i. p. 15.

It has also been stated that, there is no record or relation from any historians that William obtained any general aid from his subjects, by grant of a legislative assembly, although he levied contributions under various pretexts; and that from the first part of the Annals of Waverley, it appears, towards the close of his reign, when he had exacted the oath of fealty from the principal landholders, he passed into Normandy,—“*adquisitis magnis thesauris ab hominibus suis, super quos aliquam causam invenire poterit, sive juste sive injuste;*” words which imported “exaction,” not “grant.”

But William did not require the assistance of an “aid” from any legislative assembly, because the rents of the crown lands were generally paid in kind, and allotted to the support of the royal household; from his military tenants he received considerable sums under the different heads of reliefs, aids, wardships, and the marriages of heiresses (for unless the female ward purchased, at a considerable price, permission to marry in accordance with her inclinations, he always disposed of her in marriage by private sale, and obtained a greater or smaller sum in proportion to the value of her fee<sup>6</sup>). Escheats<sup>7</sup> and forfeitures continually occurred, and whether the king retained the lands himself, or gave them after some time to his favourites, they always brought money into the Exchequer. The fines paid by litigants for permission to have their quarrels terminated in the king’s courts, the mulets, or pecuniary penalties imposed by the laws, and the amerciements, which were sometimes customary, generally arbitrary, amounted in the course of each year to enormous sums. Tolls were levied at bridges, fairs, and markets; customs were exacted on the export and import of goods; fees, rents, and tallages, were received from the inhabitants of the burghs and ports; and lastly, the immense profits which accrued from “Danegelt.” It is stated<sup>10</sup>, from these united sources, that his income amounted daily to 1061*l.* 10*s.* 1½*d.*<sup>11</sup>

With respect to the document in the Annals of Waverley, an examination of its contents will prove that it was not an

**WILLIAM I.  
1066—1087.**

No record to prove that William I. obtained any general aid from his subjects.

William I. did not require an aid from any legislative assembly.

<sup>6</sup> 1 Rep. Dig. Peer. 35.

<sup>7</sup> Madox, 322.

<sup>8</sup> Wright, 210.

<sup>9</sup> 1 Lingard, 438, 439.

<sup>10</sup> Orderic, 258.

<sup>11</sup> A pound of that period was equal in weight to three nominal pounds of the present day, and the value of silver was perhaps ten times as great as in modern times.

WILLIAM I.  
1066—1087.

exaction by force, but extortion on pretence of law, and taken from persons against whom he could, *anige teale to habban*, produce some ground of legal complaint<sup>12</sup>.

## SECTION II.

WILLIAM II.  
1087—1100.

WILLIAM II., Sept. 9, A.D. 1087,—Aug. 2, A.D. 1100.

Violence of the  
reign.

The commencement of the reign of William II. was a series of hypocrisy<sup>1</sup>, trouble<sup>2</sup>, and desolation<sup>3</sup>;—when an arrangement had been effected between himself and his brother Robert, he became an arbitrary and oppressive despot, extorting aids, and requiring other exactions from his subjects, whenever his necessities or his caprices suggested that course<sup>4</sup>. But historians coincide that, the king was profuse in liberal professions and the treasures of his father, to those who recognised and supported his usurped title.

No records to  
illustrate the  
legislative assem-  
blies.

It appears from Eadmer and the Saxon Chronicle, that “councils” were held, the members of which are described in Saxon as “witan,” as all persons who of the king hold land; and in Latin, the lay members are termed, “regni procures,” “principes,” “primores;” or designated as “totius regni nobilitas,” or “nobilium conventus;” and, on one occasion, mention is made of “milites.” But there are no records which prove the legislative or other powers of such councils, and whether they were a body dependant or independent of the crown.

## SECTION III.

HENRY I.  
1100—1135.

HENRY I., Aug. 2, A.D. 1100,—Dec. 1, A.D. 1135.

Laws of Henry I.

Henry I. being exposed to all the odium attending an open and palpable usurpation, threatened with an invasion from the Duke of Normandy, found it imperative to ingratiate himself with the people, and therefore promised, which he partly performed, to confirm and restore the Saxon laws; and his laws, though considerably expanded, and detailed more

<sup>12</sup> 35 Edin. Rev. Art. i. p. 16.      <sup>1</sup> Eadmer, 13. 1 Lingard, 458, et seq.

<sup>2</sup> Chron. Sax. 195. Order. Vital. 668.

<sup>3</sup> Orderic, 516, 679. Pet. Bles. Contin. iii. Alur. Bev. 143. 1 Lingard, 477, 479.

<sup>4</sup> Eadmer, 19, 43. Chron. Sax. 199. 1 Hume, 302.

<sup>5</sup> 35 Edin. Rev. Art. i. p. 17.

minutely than those of the Saxons, were in effect and object the same;—breathing that spirit of liberty and justice which characterised our early institutions.

HENRY I.  
1100—1135.

The borough charters mark the distinction between villains and freemen, burgesses and foreigners; and the privileges granted were of a local character, conferring local rights on the burgesses *residing* within the limits of their respective boroughs<sup>1</sup>, all of which was in accordance with the Saxon laws.

Borough privileges.

The king gave up the grievances of marriage, ward, and relief, the beneficial pecuniary *fruits* of his feudal tenures; but reserved the tenures themselves for the same military purposes that his father had introduced them.

Feudal tenures partly abolished.

By the Saxon laws, lands descended equally to all the sons; by the feudal, or Norman, to the eldest only: but Henry directed the eldest son to have only the principal estate, “*primum patris fendum*,” the rest of his estates, if he had any others, being equally divided among them all<sup>2</sup>.

Descent of lands.

England was distracted with the impertinent pretensions of Rome<sup>3</sup>; and Henry, to check the progress of treasonable insubordination<sup>4</sup>, consented to give up to the clergy the free election of bishops and mitred abbots; reserving, however, these ensigns of patronage, *conge d'eslire*, custody of the temporalities when vacant, and homage upon their restitution<sup>5</sup>. He lastly united again, for a time, the civil and ecclesiastical courts, which union was soon dissolved by his Norman clergy; and upon that final dissolution, the cognizance of testamentary causes seems to have been first given to the ecclesiastical court<sup>6</sup>.

Ecclesiastical regulations.

“Councils” were frequently held during this reign; but there are no records to establish what were their positive rights,—whether, when assembled, the king was bound by their decisions,—or whether the crown was bound by any constitutional law to summon any particular class, or persons, as essential component parts.

Assemblage of “councils.”

<sup>1</sup> Lamb. Archaionomia, ex edit. Twisden. Wilkins, 235.

<sup>2</sup> 4 Black. Com. 421.

<sup>3</sup> Eadmer, 56, 61, 91, 125, 137, 138. Sax. Chron. 229. W. Malm. 225. Hoveden, 474. 1 Hume, 325, et seq. 1 Lingard, 500, 526, et seq.

<sup>4</sup> Eadmer, 73, 79, 80. Mat. Paris, 40. W. Malm. 226. Hoveden, 471. Sax. Chron. 229.

<sup>5</sup> Hoveden, 471. Mat. Paris, 43. Eadmer, 91. W. Malm. 164, 227. Brompton, 1000. Chron. Dunst. 21. Wilkins, 303. Sim. Dunelm. 239.

<sup>6</sup> 4 Black. Com. 421. Spelm. 305. 2 Inst. 70.

**HENRY I.  
1100—1135.**

Legislative  
powers of the  
king.

There is an instrument published in the *Fœdera*<sup>7</sup>, in which Henry assumed, by his mere authority, the power of confirming the provisions of an ecclesiastical council, using the words, "*Auctoritate Regia et potestate concedo*," without mention of the authority of any council or assembly, and threatening the exercise of his regal power to compel obedience to its provisions.

But, upon the other hand, the "councils" that were summoned seem to have consisted, from the language, of all the rank and property of the country<sup>8</sup>.

Component  
members of the  
councils.

Thus, in a charter granted by Henry<sup>9</sup>, it appears he had been crowned,—"*Communi consilio baronum totius Regni Anglie*." Historians mention, that Henry convened the "great men" of his kingdom to assist him in his successful invasion of Normandy, when he defeated and made prisoner his brother Robert, and again united the duchy of Normandy to the kingdom of England; and when he required his subjects to swear allegiance to his daughter Matilda as his successor.

Eadmer states, he assembled his bishops and "*proceres*," in order to discuss and settle the question of investitures; that, by the advice of Anselm and his "*proceres*," he made severe laws to repress the abuses of purveyance, and to correct the disorders of the coinage; and that, having enjoined his bishops to make further regulations to restrain the incontinence of their clergy, he confirmed their decrees,—"*assensu omnium baronum suorum*"<sup>10</sup>.

Traces of other councils are to be found, being described as, "*tota regni nobilitas*"<sup>11</sup>, "*omnes barones mei*"<sup>12</sup>, "*concilium totius Anglie*"<sup>13</sup>, "*baronum maximus conventus*"<sup>14</sup>, "*primates, principes, optimates*," and "*barons of all England*"<sup>15</sup>,—as all his bishops, abbots, and thegns, summoned by the king's writ to a "*gewitene mot*"<sup>16</sup>.

<sup>7</sup> *Fœdera*, N. E. tom. i. p. 8.

<sup>8</sup> Sax. Chron. 211, 230. H. Hunt. 227. Gervase, 1375. Jo. Hagulstad. 282. 1 *Fœdera*, 18.

<sup>9</sup> Vide Archives of Rochester Cathedral; Red Book of the Exchequer; 1 Stat. Realm, i.

<sup>10</sup> Eadmer, 91, 94, 95.

<sup>11</sup> Ibid. 59. Fl. Wigorn. 662.

<sup>12</sup> Eadmer, 86.

<sup>13</sup> Sim. Dunelm. 243.

<sup>14</sup> Contin. Ingulph. 128.

<sup>15</sup> Eadmer, 117, 136. H. Hunt. 220. Sim. Dunelm. 256. Fl. Wigorn. 657.

<sup>16</sup> Chron. Sax. 224; et vide passim 35 Edin. Rev. Art. i. p. 18.

## SECTION IV.

STEPHEN, Dec. 1, A.D. 1135,—Oct. 25, A.D. 1154.

STEPHEN.  
1135—1154.Charters of  
Stephen.

Stephen, at the commencement of his reign, issued two charters<sup>1</sup>: in the first he is stated, “*Dei gratia assensu cleri et populi, in regem Anglorum electus,*” and this election was made in a convention of the great men, similar to that which authorised the coronation of Henry I.; and the second charter of Stephen was a confirmation of the first charter of his immediate predecessor.

Stephen and Matilda, equally dependant on the caprice of their adherents, were compelled to connive at excesses which it would have been dangerous to punish: and the foreign mercenaries frequently indemnified themselves for the want of pay, by the indiscriminate plunder of friend and foe<sup>2</sup>; and the country had become so impoverished, “that villages and towns were left destitute of inhabitants, and in many parts a man might ride a whole day without discovering on his route a human being<sup>3</sup>.” from such a state of society, materials to illustrate our constitutional history cannot be expected.

Desolation of the  
country.

It is, however, from this reign, that the introduction into England of the Roman civil and canon laws is to be ascribed; and the church of Rome, availing itself of the civil wars, imported the doctrine of appeals to the court of Rome, as a branch of the canon law, though it had been always forbidden by the English laws<sup>4</sup>.

Introduction of  
the civil and  
canon laws.<sup>1</sup> 1 Stat. Realm, 3, 4.<sup>2</sup> 2 Lingard, 31.<sup>3</sup> Sax. Chron. 239, 316. Gest. Steph. 961.<sup>4</sup> II. Hunt. 395. 1 Hume, 369. 4 Black. Com. 421.

## CHAPTER III. THE HOUSE OF PLANTAGENET.

A.D. 1154—1399.

HENRY II.—RICHARD I.—JOHN.—HENRY III.—EDWARD I.—EDWARD II.—  
EDWARD III.—RICHARD II.

### SECTION I.

HENRY II., Oct. 25, A.D. 1154,—July 6, A.D. 1189.

1. Constitutions of Clarendon.

2. Administration of Justice.

**HENRY II.  
1154—1189.**

State of the  
country.

#### 1. *Constitutions of Clarendon.*

DURING this reign, England recovered from the effects of the Norman invasion, and its civil wars in the reign of Stephen; commerce increased, “councils” were assembled as in previous reigns, the general administration of the government improved, the people became more obedient to law, and the whole of the lower orders, and particularly the inhabitants of cities and boroughs, increased in wealth and importance: these circumstances had a tendency to create alterations in the existing constitution.

Evil conse-  
quences from the  
separation of the  
clergy from the  
laity.

The reign of Henry II. was marked by the evil consequences produced by the separation of the clergy from the laity, as members of the same commonwealth. The lay and ecclesiastical jurisdictions were, at this period, completely separated; and the clergy being enabled to assume powers and exemptions utterly inconsistent with the good government of the country, having emancipated themselves from the laws as administered by lay jurisdictions<sup>1</sup>. But the clergy as a body, under the guise of religion, mixed in all the temporal contests between the sovereign and the people<sup>2</sup>.

<sup>1</sup> Fitz-Stephen, 27. 2 Lingard, 59, 60. Diceto, 537. Stephan. 32. Quadril, c. 7. 1 Hume, 382.

<sup>2</sup> Every unprejudiced individual must, however, concur in opinion with Guizot, that, humanly speaking, Christianity could not have maintained itself against the inroad of pagan barbarians merely by its intrinsic merits, and by the energy of individual convictions. But its interests were under the care of a body of men who were the most cultivated of the age, and who alone, in the general dissolution of all things round them, remained compactly knit together, powerfully organized for a common object. The influence which this body acquired over the barbarian invaders, and which

Such a state of things was productive of the "Constitutions of Clarendon<sup>3</sup>," by which it was enacted, that all suits concerning the advowson and presentation of churches should be determined in the civil courts: that the churches belonging to the king's fee should not be granted in perpetuity without his consent: that clerks accused of any crime should be tried in the civil courts: that no person, particularly no clergyman, of any rank, should depart the kingdom without the king's licence: that excommunicated persons should not be bound to give security for continuing in their present place of abode: that laics should not be accused in spiritual courts, except by legal and reputable promoters and witnesses: that no chief tenant of the crown should be excommunicated, nor his lands be put under an interdict, except with the king's consent.

That all appeals in spiritual causes should be carried from the archdeacon to the bishop, from the bishop to the primate, from him to the king; and should be carried no farther without the king's consent: that if any lawsuit arose between a layman and a clergyman concerning a tenant, and it be disputed whether the land be a lay or ecclesiastical fee, it should first be determined by the verdict of twelve lawful men to what class it belonged; and if it be found to be a lay fee, the cause shall be finally determined in the civil courts.

That no inhabitant in demesne should be excommunicated for non-appearance in a spiritual court, till the chief officer of the place where he resides be consulted, that he may compel him by the civil authority to give satisfaction to the church.

That the archbishops, bishops, and other spiritual dignitaries, should be regarded as barons of the realm; should possess the privileges, and be subjected to the burdens belonging to that rank; and should be bound to attend the king in

HENRY II.  
1154—1189.

Suits respecting the advowson and presentation of churches to be determined in the civil courts.

Criminal process against clerks.

Appeals in spiritual causes.

Excommunication of inhabitants in demesne.

The prelates to be regarded as barons of the realm.

was so early manifested in their outward conversion to Christianity, introduced among them the belief in an authority superior to that of the sword, and in a law binding on the conscience, even in the absence of any temporal sanction. The power of the church,—a power exerted through men's conviction, and by their voluntary concurrence,—was for ages the only counterpoise to the mere law of the strongest.

<sup>3</sup> These Constitutions have only been preserved by the relation of historians, and by a copy in the British Museum, (Cotton MS. Claud. B. fol. 26,) and the different copies do not correspond. According to the copy printed by Lord Lyttleton, they are in the form of a declaration and recognition, in the presence of the king, of a certain part of the customs and liberties and dignities of his predecessors; viz., of King Henry his grandfather, and others, which ought to be observed and held in the kingdom.



HENRY II.  
1154—1189.

his great councils, and assist at all trials, till the sentence, either of death, or loss of members, be given, against the criminal.

Revenues of  
vacant sees to  
belong to the  
crown.

That the revenue of vacant sees should belong to the king; the chapter, or such of them as he pleases to summon, should sit in the king's chapel till they made the new election with his consent, and that the bishop-elect should do homage to the crown.

Bishop-elect to  
do homage to the  
king.

That if any baron or tenant *in capite* should refuse to submit to the spiritual courts, the king should employ his authority in obliging him to make such submissions; if any of them throw off his allegiance to the king, the prelates should assist the king with their censures in reducing him.

Non-exemption  
of the clergy  
from civil con-  
tracts.

That goods forfeited to the king should not be protected in churches or churchyards: that the clergy should no longer pretend to the right of enforcing payment of debts contracted by oath or promise; but should leave these lawsuits, equally with others, to the determination of the civil courts: and that the sons of villains should not be ordained clerks without the consent of their lords<sup>4</sup>.

## 2. Administration of Justice.

Appointment of  
justices in eyre.

Hitherto all causes were usually terminated in the county courts, according to the Saxon laws; or before the king's justiciaries in the "Aula Regis," in pursuance of the Norman regulations. The judgments of the former tribunal had become equally ignorant and partial; the latter, travelling with the king's person, its judgments were expensive and dilatory: to rectify such abuses, the king, at an assemblage of his council, divided the kingdom into six circuits, which nearly coincide with those of the present day<sup>1</sup>; instituted the office of justices in eyre, *in itinere*; and commissioned these justices to administer justice, and try writs of assize in the several counties. The motive which influenced Henry was not an abstract sense of justice, but to increase his revenues;

<sup>4</sup> 2 Spel. Conc. 63. Gervase, 1386, 1387. Wilkins, 321. M. Paris, 70, 71. Hist. Quadr. 163. 1 Hume, 393, 394. 2 Lingard, 63, 64.

<sup>1</sup> The chief difference lies in the Home Circuit, which formerly comprised Kent, Surrey, Sussex, Hampshire, Berkshire, and Oxfordshire, but has now lost the latter three, and received in their place Hertford and Essex, originally belonging to the Norfolk Circuit. Hoveden, 313. 1 Bened. Abb. 136. Diceto, 588.

and the judges, always guided by precedent and authority, increased their revenues, with the exception of Glanville, by the receipt of all monies which were offered them to influence their judgments<sup>2</sup>.

HENRY II.  
1154—1189.

The instructions to the judges were as follows:—They were authorised and directed to look after the king's interest to the best of their power; to hold pleas of the crown, provided the value did not exceed half a knight's fee; to try malefactors of all descriptions; to receive the oath of fealty to the king from the earls, barons, knights, freemen, and villains; to inquire what wards were, or ought to be, in the guardianship of the king, their sex and quality, the present possessors, and the value of their estates; what females were, or ought to be, in the guardianship of the king, their sex and quality, the present possessors, and the value of their estates; what females were, or ought to be, at the disposal of the crown, whether they were married or not, and if married, to whom, by whose permission, and what was the rental of their property.

Instructions to  
the judges.

What churches were in the gift of the crown, their situation and annual value, who were the incumbents, and by whom they were presented; what lands had lapsed to the crown, who held them, what was their value, what their tenure; what encroachments had been made on the royal forests or demesnes; who had violated the statutes respecting weights and measures; what sheriffs and bailiffs had received fines of defaulters; what had become either of the chattels of Christian, or of chattels, pledges, debts, and deeds, of Jewish, usurers after their death; and lastly, to inquire into the state of the coinage, the clipping of the coin, the exchange; burglaries, outlawries, the removal of markets without licence, the introduction of new customs, and the taking of bribes to exempt tenants from provisioning the royal castles<sup>3</sup>.

To this reign must also be ascribed the introduction and establishment of the grand assize, or trial by special kind of jury in a writ of right, at the option of the tenant or defendant, instead of the barbarous and Norman trial by battel<sup>4</sup>; and the introduction of escuage, or pecuniary commutation for

<sup>2</sup> Diceto, 606. Hoveden, 337. 2 Lingard, 137.

<sup>3</sup> Hoveden, 314. Bracton, iii. tr. ii. c. i. 2 Lingard, 135. 1 Hume, 393.

<sup>4</sup> 4 Black. Com. 422. 1 Hume, 440, 450. 2 Lingard, 143.

**HENRY II.**  
1154—1189.

personal military service; which, in process of time, was the parent of the ancient subsidies granted to the crown by parliament, and the land-tax of later times<sup>3</sup>.

## SECTION II.

**RICHARD I.**  
1189—1199.

**RICHARD I., July 6, A.D. 1189,—April 6, A.D. 1199.**

Oppression by  
the king.

From the relation of historians, the reign of Richard I. was very oppressive. The king spent the greater part of his reign between France, the Holy Land, on his voyages, or in captivity; and the promises made by John to obtain the throne, indicate that the government had been tyrannical.

Forest laws.

Uniformity of  
weights and  
measures.

Law of wrecks  
mitigated.

The forest laws were renewed, and enforced with severity, but the nation received two beneficial legislative charters<sup>1</sup>; by one a uniformity of weights and measures were established, by the other the severity of the law of wrecks was mitigated. Formerly it had been held, that, by the loss of the vessel, the original owner lost all right to his goods, which then became the property of the crown. Henry I. had granted that, if any man escaped alive, it should be considered no wreck. Henry II. added that, if even a beast escaped by which the owner might be discovered, he should be allowed three months to claim his property. Richard now enacted that, if the owner perished, his sons and daughters, and in their default his brothers and sisters, should have a fair claim in preference to the crown<sup>2</sup>.

Assemblage of  
councils.

“Councils” were assembled as heretofore; but it is almost impossible for any representative body to have existed analogous to that which occurred in the reign of Edward I.,—neither the state of property, nor the state of the people, admitted of such a constitution.

Personal prop-  
erty of small  
value.

Personal property was then comparatively of small value: the waste produced by the advent of William in cities and boroughs, and in the country at large, is apparent from Domesday. On the borders of Scotland and Wales the people were constantly liable to incursions of predatory hordes, were almost always in a state of war, with difficulty supported themselves against their invaders and immediate neighbours;

<sup>3</sup> 4 Black. Com. 422. 1 Hume, 469.

<sup>1</sup> Hoveden, 774. M. Paris, 109, 134. Ann. Waverl. 165. 2 Hume, 36.

<sup>2</sup> Leg. Sax. 342, 349. 2 Lingard, 205.

consequently, could scarcely contribute in any respect to the  
ment.

A very large proportion of landed property was either in the hands of the crown or the church, and almost all the principal cities and boroughs belonged to the crown, and so far dependant on its pleasure.

From such a state of things, the "mass of the people" could scarcely have influenced the government of the country; and no existing records can prove their actual participation either directly or indirectly; the crown, the church, and tenants *in capite*, were the only persons that appear to have had political influence.

Richard, to answer his exigences, raised great sums of money for the purpose of his expedition to the Holy Land, by grants of immunities, exemptions, and privileges, particularly to cities and boroughs, as well as by extortions under various pretences.

Besides selling to the citizens and burgesses of many cities and boroughs various privileges, he made grants to many of their respective cities and boroughs, the demesnes of the crown, in fee farm. By those grants they became tenants in chief of the crown, independent of the officers of the crown, and generally enjoyed separate municipal jurisdictions under their own officers, receiving the revenues of the crown in their respective cities and boroughs as their general property, possessing the influence derived from those revenues, holding of the king as "aggregate bodies" by a free tenure, and deriving from their aggregation a consequence, which could not have belonged to them as individuals.

By subinfeudations, divisions of lands amongst coheirs, forfeitures and escheats, regrants from the crown in smaller parcels, sales, usurpations in times of confusion, and by various other means, the lands of the kingdom fell into the hands of a larger number of proprietors.

A great proportion of those who thus acquired influence, were younger branches of the principal families, provided for by parts of the family property; others from having obtained grants of lands for services or from favour; and many, from having acquired personal wealth, were enabled to become purchasers of land; the spirit of the Crusades having induced the owners in fee, especially during the reign of Richard, to part with great portions to the best bidder, for the purpose of raising money towards those expeditions.

RICHARD I.  
1189-1199.

Landed property  
where vested.

Sums of money  
raised by the  
crown.

Demesnes of the  
crown granted in  
fee farm, to bur-  
gesses.

Subdivision of  
lands.

RICHARD I.  
1189—1199.

New character  
acquired, by a  
large portion of  
the people.

Thus, by degrees, a new state of property, both real and personal, arose throughout the kingdom, and a new character was given to a large portion of the people; and on the death of Richard, many concurring circumstances had a tendency to produce important changes, which the accession of John, the imperfection of his title, the loss of Normandy, and its final separation from the crown of England, his character (little calculated to obtain respect), his extravagance, and general conduct throughout his reign, probably hastened<sup>3</sup>.

### SECTION III.

JOHN, April 6 A.D. 1199,—October 19, A.D. 1216.

1. Magna Charta.
2. Legislative Assemblies.      3. Borough Institutions.

JOHN.  
1199—1216.

Character of  
John.

#### 1. Magna Charta.

Richard I. was succeeded by a sovereign who lost, by his misconduct, the flourishing provinces in France, the ancient patrimony of his family; subjected his kingdom to a degrading vassalage under the sec of Rome; saw the prerogatives of his crown diminished by law, and still more reduced by faction; and who died, when in danger of being expelled by France, and of either ending his life miserably in prison, or seeking shelter as a fugitive from the vengeance of his enemies<sup>1</sup>.

He was equally odious and contemptible in other respects, having affronted the barons by his insolence, dishonoured their families by his gallantries, enraged them by his tyranny, and given discontent to all ranks of men, by endless exactions and impositions<sup>2</sup>.

The effect of such practices appeared in the solicitation of the barons for a restoration of their privileges; and after the king had reconciled himself to the pope, by abandoning the independence of his kingdom<sup>3</sup>, justly appeared to all his subjects in so mean a light, that they insisted upon their constitutional rights<sup>4</sup>.

Barons demand  
their constitu-  
tional rights.

<sup>3</sup> 1 Rep. Dig. Peer. 51, 52, 53.

<sup>1</sup> 1 Hume, 97, 98.    2 Lingard, 265, et seq.

<sup>2</sup> Ann. Waverl. 181, W. Heming. 567. Chron. Mailr. 188, T. Wykes, 36.

<sup>3</sup> 2 Lingard, 234.

<sup>4</sup> M. Paris, 214.    2 Hume, 78.    2 Lingard, 249, et seq.

These circumstances enforced from John "Magna Charta," every provision of which, was inserted in consequence of a positive and then existing abuse.

JOHN.  
1199—1216.

The charter secured to the clergy all their rights entire, and liberties unhurt, with the freedom of elections<sup>5</sup>, confirming also that grant by which the necessity of a royal congé d'elire and confirmation was superseded:—all check upon appeals to Rome was removed, by the allowance granted every man to depart the kingdom at pleasure:—and the fines to be imposed on the clergy, for any offence, were ordained to be proportional to their lay estates, not to their ecclesiastical benefices<sup>6</sup>.

Privileges of the church.

The privileges to the barons were either abatements in the rigour of the feudal law, or determinations upon points which had been left by that law, and had become by practice, arbitrary and ambiguous. The reliefs of heirs succeeding to a military fee were ascertained; an earl's and a baron's being a hundred marks, a knight's one hundred shillings<sup>7</sup>.

Privileges of the barons.

Reliefs of heirs.

It was provided that, if the heir be a minor, he might immediately upon his majority, enter upon his estate, without paying any relief:—that the king was not to sell his wardship; and should levy only reasonable profits upon the estate, without committing waste or hurting the property; to uphold the castles, houses, mills, parks, and ponds; and if the guardianship of the estate was committed to the sheriff or any other, he should previously oblige them to find surety for the same purpose<sup>8</sup>.

Estates of minors.

That during the minority of a baron, while his lands were in wardship, and were not in his own possession, no debt which he owed to the Jews should bear any interest<sup>9</sup>.

Heirs were to be married without disparagement; and before the marriage was contracted, the nearest relations of the person were to be informed of it<sup>10</sup>. A widow, without paying any relief, might enter upon her dower, the third part of her husband's rents. She was not to be compelled to

Marriages of heirs, and widows.

<sup>5</sup> M. Paris, 178—180, 213—221. West. 206—268. 1 Rymer, 198. 2 Lingard, 219, et seq; 246.

<sup>6</sup> 2 Lingard, 251. 6 Henry, 67.

<sup>7</sup> Madox, Hist. Exch. c. 10, s. 1. 2 Lingard, 252. 6 Henry, 69.

<sup>8</sup> Madox, Hist. Exch. c. 13, s. 8. 6 Henry, 70. 2 Lingard, 252.

<sup>9</sup> Johnson's Canons, A.D. 785, 17; 1064, 16. 6 Henry, 77.

<sup>10</sup> 1 Madox, 465, 512. 1 Rymer, 441. 2 Lingard, 251, 252.

JOHN.  
1199—1216.

Wardship of  
minors holding  
by military  
tenure of a baron.

Imposition of  
scutages.

Common council  
of the kingdom,  
to assess an aid.

Amorcements.

Pre-emption.

Inferior vassals.

marry, so long as she chose to continue single; and only to give security never to marry without her lord's consent<sup>11</sup>.

The king was not to claim the wardship of any minor, who held lands by military tenure of a baron, on pretence that he also held lands of the crown, by socage or any other tenure.

Scutages were to be estimated at the same rate as in the time of Henry I., and no scutage or aid was to be exacted, except in the three general feudal cases, the king's captivity, the knighting of his eldest son, and the marrying of his eldest daughter<sup>12</sup>.

"To have a common council of the kingdom, to assess an aid, otherwise than in the three foresaid cases, or to assess a scutage, we will cause to be summoned the archbishops, bishops, earls, and greater barons, personally, by our letters; and besides we will cause to be summoned in general, by our sheriffs and bailiffs, all those who hold of us in chief, to a certain day, at the distance of forty days at least, and to a certain place; and in all the letters of summons, we will express the cause of the summons; and the summons being thus made, the business shall go on at the day appointed, according to the advice of those who shall be present, although all who have been summoned have not come<sup>13</sup>."

The king was not to seize any baron's land for a debt to the crown, if the baron possessed as many goods and chattels as were sufficient to discharge the debt<sup>14</sup>. No man was to be obliged to perform more service for his fee than he was bound by his tenure. No governor or constable of a castle was to oblige any knight to give money for castle guard, if the knight was willing to perform the service in person, or by another able-bodied man; and if the knight be in the field himself, by the king's command, he was to be exempted from all other service of this nature; and no vassal was to be allowed to sell so much of his land, as to incapacitate him from performing his service to his lord.

It was also enacted that all the foregoing privileges and immunities, granted to the barons against the king, should be extended by the barons to their inferior vassals; and the king bound himself not to grant any writ, empowering a baron to levy aids from his vassals, except in the three feudal cases<sup>15</sup>.

<sup>11</sup> Chron. Dunst. 74. Madox, Hist. Exch. c. 13, s. 2. 6 Henry, 72.

<sup>12</sup> 2 Lingard, 252.

<sup>13</sup> 8 Henry, 90.

<sup>14</sup> 2 Lingard, 255.

<sup>15</sup> Ibid. 257.

One weight and one measure were to be established throughout the kingdom. Merchants were to be allowed to transact all business, without being exposed to any arbitrary tolls or impositions<sup>16</sup>; and they and all freemen were to be allowed to go out of the kingdom and return at pleasure<sup>17</sup>; and no lands were to be alienated in mortmain.

London and all cities and boroughs were to preserve their ancient liberties, immunities, and free customs<sup>18</sup>; aids were not to be required of them but by the consent of the great council<sup>19</sup>; and no towns or individuals were to be obliged to make or support bridges but by ancient custom.

The goods of every freeman were to be disposed of according to his will; and if he died intestate, his heirs were to succeed to them; and no officer of the crown was to take any horses, carts, or wood, without the consent of the owner<sup>20</sup>.

The king's courts of justice were to be stationary<sup>21</sup>, and were no longer to follow his person; they were to be open to every one, and justice no longer to be sold, refused, or delayed<sup>22</sup>. Circuits were to be held every year: the inferior tribunals of justice, the county court, sheriff's tourn, and court leet, were to meet at their appointed time and place. The sheriffs were to be incapacitated to hold pleas of the crown; and not to put any person upon their trial, from rumours or suspicion alone, but upon the evidence of lawful witnesses.

No freeman was to be taken or imprisoned, or dispossessed of his free tenement and liberties, or outlawed, banished, or anywise hurt or injured, unless by the legal judgment of his peers, or by the law of the land<sup>23</sup>; and all who suffered otherwise, in this or the former two reigns, were to be restored to their rights and possessions. Every freeman was to be fined in proportion to his fault; and no fine to be levied on

JOHN.  
1199—1216.

Public police.

Confirmation of  
borough privi-  
leges.

Testamentary  
rights.

Purveyance.

Administration  
of justice.

Protection of the  
subject.

<sup>16</sup> Mirror, c. 1, s. 3. Madox, Hist. Exch. c. 13, s. 3, p. 323. Leges Wallicæ, 330.

<sup>17</sup> Vita S. Thomæ. l. 2, c. 14, p. 82. Epistolæ S. Thomæ. l. 1; ibid. 48, l. 3. M. Paris, 117. 2 Lingard, 256. 6 Henry, 75.

<sup>18</sup> 2 Lingard, 256.

<sup>19</sup> Madox, Hist. Exch. c. 11, s. 12. 6 Henry, 76.

<sup>20</sup> Eadmer, Hist. Nov. l. 4, p. 94. 2 Lingard, 256. 6 Henry, 84.

<sup>21</sup> 2 Lingard, 253.

<sup>22</sup> 1 Madox, 448, 452, 515, 517. Hist. Croyl. 455—477. 2 Lingard, 253. 6 Henry, 81.

<sup>23</sup> Vita S. Thomæ, l. 2, c. 14, p. 82. Epistolæ S. Thomæ, l. 1; Ep. 48, l. 3; Ep. 79. 6 Henry, 79.



JOHN.  
1199—1216.

The object of political contests is party aggrandizement.

him to his utter ruin<sup>24</sup>: and a "villain" or "rustic" was not, by any fine, to be bereaved of his carts, ploughs, and implements of husbandry<sup>25</sup>.

This was the only article calculated for the interests of this body of men, probably at that time the most numerous in the kingdom, a fact tending to establish the proposition,—that in all political contests the struggle is merely for party aggrandizement, and without any view to the maintenance or increase, of the welfare or happiness of the people at large.

## 2. *Legislative Assemblies.*

First attempt to assemble a general representative body.

The first proceeding towards assembling a general representative body, is in 15 John, when writs were issued to all the sheriffs of the different counties, commanding them to require the attendance of certain knights within their respective bailiwicks, at Oxford, with arms, in fifteen days from the day of All Saints;—and on November 7, in the same year, other writs were issued to all the sheriffs, commanding them to cause all the knights so summoned to be at Oxford on the appointed day, with arms, and the bodies of the barons (who, it must be presumed, were summoned to appear at Oxford at the same time), without arms; and in like manner to cause to come to the king, at the same time, four discreet knights of each county, "ad loquendum nobiscum de negotiis regni nostri".

There is no record to establish, whether these writs or those to which they refer, were obeyed or not. The language of the last writ implies a distinction between such as were styled "barons," apparently including the "earls," and the four knights who were to come from the several counties "ad loquendum," and who were also distinguished from the knights summoned to attend with arms. How the four knights of each county were to be chosen, whether by the county, or according to the mere will of the sheriff, does not appear.

<sup>24</sup> 6 Henry, 82. 2 Lingard, 255. Glanvill, l. 9, c. 8. Bracton, l. 3, tr. 2, c. 2.

<sup>25</sup> 2 Hume, 84, et seq.

<sup>1</sup> *Fœdera*, N. E. tom. i. 117; vide etiam tom. i. 96. *Claus.* 8 John, dors. 2. *Pat.* 8 John, n. 1, m. 3.

It has been attempted to infer from the great charter of John, what were the constituent parts of the then legislative council; but no clear information can be deduced from such a source.

The great charter of John purports to be the act of the king, by the council or advice, "per concilium," of the archbishop of Canterbury, the archbishop of Dublin, divers English bishops, the pope's legate, the master of the Temple, William Mare-schall, earl of Pembroke, with other noblemen particularly named, "et aliorum fidelium nostrorum."

All the persons thus described cannot be considered as having formed, according to law, parts of a legislative council of the kingdom, particularly the archbishop of Dublin, in that character, and the pope's legate; and the expression—"aliorum fidelium nostrorum," as used in the charter, is too indefinite to afford any just inference.

The persons specified by name in the charter as those by whose advice it was granted, were only the persons who were of the king's party in that transaction: Robert Fitzwalter, the leader of the discontented barons, and the earls and barons of that party, not being named in the charter<sup>2</sup>, and the meeting at which the business was transacted, was in pursuance of an agreement made by the Earl of Pembroke on behalf of the king, with Fitzwalter, styling himself Marshal of the Army of God and of the Holy Church in England, and the earls and barons associated with him, on behalf of themselves and the rest of the people. By this agreement the king stipulated to meet Fitzwalter and his party on an appointed day, at Runimode, to settle the subjects of dispute between the king, the church, and the people.

The articles<sup>3</sup> containing the demands of the barons, and from which the charter was formed, are entitled "*Ista sunt Capitula que Barones petunt et Dominus Rex concedit*," and they conclude, "*Omnes autem istas Consuetudines et libertates quas Rex concessit Regno tenendas, quantum ad se pertinet erga suos, omnes de Regno, tam Clerici quam Laici, observabunt, quantum ad se pertinet erga suos.*"

The transaction taken in all its parts, affected the whole body of the people; not only as between them and the crown, but also as between the different classes of the

JOHN.

1199—1216.

Magna Charta affords no information as to legislative councils.

The charter purports to be the act of the king.

Persons specified by name in the charter.

Articles containing the demands of the barons.

The charter affected the whole body of the people.

<sup>2</sup> *Fœdera*, N. E. tom. i.

<sup>3</sup> *Ibid.* 120.

JOHN.  
1199—1216.

king's subjects; and the articles under the king's seal, as well as the charter, must be deemed to have been made, for the time, part of the law of the land, though neither appears to have been expressly enacted in any legislative assembly constituted for that purpose.

Assembly at  
Runimede not a  
regular legisla-  
tive assembly.

The assembly at Runimede was not a regular legislative assembly, convened according to any known constitutional law<sup>4</sup>; nor indeed does there appear to have been any writ or proclamation of the king for the purpose of its convention. It met according to the stipulation made with the barons in arms and their adherents, it was made on the king's part unwillingly, as a concession to superior force, but conceding nothing which the clergy, the barons, and the people did not consider as their just rights, acknowledged by the charters of Henry I. and Henry II., and in effect by that of William I.

Election of  
knights to in-  
quire of bad cus-  
toms.

The instrument which secured the performance of the terms of the charter on the king's part, refers to a writ tested at Runimede, June 19, 17 John, reciting the charter which was tested June 15, 17 John, and commanding obedience to it, and also commanding twelve knights of each county to be elected "in primo comitatu," to inquire of the bad customs to be abolished, according to the charter.<sup>5</sup>

No allusion made  
in the charter of  
an appeal to a  
legislative as-  
sembly.

If any legislative assembly existed at this period, it seems extraordinary that some allusion to it was not made, but neither the king, nor the discontented barons, nor the barons who adhered to the king, at any time appealed for the decision of their differences, to a legislative assembly to be convened for that purpose, according to any existing law, or according to any newly-devised form, by which the authority of the whole nation might be solemnly given, to any compact which might be made for settling those differences, and providing for the peace and future good government of the country.

No article in the  
charter refers to  
a previous legis-  
lative assembly.

It is also remarkable that no article in the charter, has reference to the previous existence of any assembly, convened for general purposes of legislation, nor does the charter contain any provision for the calling of any such assembly in future, nor any provision purporting the existence by law of any representative system for the purpose of general legisla-  
tion.

<sup>4</sup> *Fœdera*, N. E. tom. i. 129.

<sup>5</sup> *Ibid.* 130, 133, 134.

It may be doubted, therefore, whether the writ issued in 15 John, for the election of knights to come to the king at Oxford, "*ad loquendum de Negotiis Regni*," was not without precedent, and without any other legal authority than that, which it might derive from the king's prerogative.

Some, however, of the provisions in the charter of John, do refer to the convention of an assembly for the purpose of assessing extraordinary aids to the king, and scutage, which was generally a conversion of military service due by tenure into a money payment: and various clauses of the charter recognise persons distinguished by the appellation of "*comites*" and "*barones*," but generally with reference only to their property, and the charges by which it may be affected.

The citizens and burgesses of cities and boroughs which held of the king in *fee-farm*, held by a tenure, of which homage was not a consequence; they were not military tenants, and scutage was a matter with which they, as citizens and burgesses, as bodies or individually, had no concern.

The bodies of citizens and burgesses of these cities and boroughs, were tenants in chief of the crown of their respective cities and boroughs which they held in *fee-farm*; but they were such respectively as a body, and not as individuals.

As a body they were liable to no charge, but the *fee-farm* rent reserved on the grant to the body;—as individuals, they were liable to tallage; and any extraordinary aid granted to the crown, whether in lieu of tallage, or distinct from it, must have been levied on the individuals, and not on the body which held the borough or city in *fee-farm*.

In the assembly to be convened by special and general summons under the charter of John, if citizens and burgesses, holding in chief of the crown, had been comprised, they could only have appeared by some of their respective bodies, and therefore could only have appeared by some sort of representation. But in the charter of John, appearance by representation was not provided in the case of such tenants in chief of the crown as should not be specially summoned;—though the example of representation was to be found in the writs of 15 John, and in the provision of the charter itself, for the election of twelve knights in each county, to inquire of bad customs.

But in fact there are no records extant by which it can be inferred, that any city or borough appeared by any of its

JOHN.  
1199—1216.

Writs of 15 John  
unprecedented.

Convocation of  
an assembly.

Citizens and bur-  
gesses held by a  
tenure, of which  
homage was not  
a consequence.

Burgesses ten-  
ants in chief of  
the crown.

Liability to tal-  
lage.

Citizens, &c.  
could not be sum-  
moned under the  
charter of John.

Citizens, &c. not  
represented in  
any council.

JOHN.  
1199—1216.

John repudiates  
the charter.

No legislative  
assembly under  
the charter.

citizens or burgesses as its representatives in any great council, prior to, or during, the reign of John.

John lived only a year and four months after the transaction at Runimede. He refused to adhere to the terms of his charter, and obtained the pope's bull for that purpose<sup>6</sup>; and the greater part of the time, from the meeting at Runimede till his death, was spent in contest with the discontented barons, and with Lewis, son of the King of France<sup>7</sup>.

It is, therefore, improbable that any convention of a legislative assembly, or "commune concilium regni," was held during the reign of John, after the transaction of Runimede, either according to the terms expressed in his charter, or otherwise<sup>8</sup>, and consequently no practice in this reign, under the charter, to assist in its interpretation.

### 3. Borough Institutions.

Immunities to  
boroughs and  
individuals.

Notwithstanding the tyranny and exactions of John, the charter rolls contain a large collection of grants, liberties, and privileges, as well to ecclesiastical as to lay bodies; likewise grants to individuals of lands, protections and franchises.

Altogether seventy-seven charters to cities and boroughs appear during nine years of this eventful reign.

Some of these charters were for the purpose of creating boroughs; but the generality of them speak of the burgesses and citizens, who were, for municipal, and subsequently for parliamentary, purposes, synonymous, as a class of persons existing in the place to which such charters were given.

Ancient privi-  
leges preserved.

These charters evince that none of the borough privileges were in the slightest degree encroached upon; and the majority contain a direct reference to, and confirmation of, all the early charters.

Prerogative of  
the crown to  
create boroughs.

The prerogative of the crown to create boroughs may be thus defined:—As the head of the executive government, the king possesses the power of declaring, *pro bono publico*, within what districts the law shall be locally administered. But the king does not possess the power of granting municipal privileges to any class of persons, except those who are defined

<sup>6</sup> 1 Rymer, 203, 205, 208, 211, 212. M. Paris, 223, 225, 227, 228, 232. 2 Lingard, 263.

<sup>7</sup> M. Paris, 237 et seq. Chron. Dunstap. 75; Mailros, 191. 1 Rymer, 214. 2 Lingard, 270.

<sup>8</sup> 1 Rep. Dig. Peer, 54 et seq.

by the common law as the "freemen:" for, as the creation of boroughs is *pro bono publico*, the king cannot divest a subject of a right, in which the commonwealth are interested<sup>1</sup>. In fact, the principles embodied in the recent "Reform" and "Municipal Corporation Acts," are but a partial restoration to the boroughs of their ancient and unrepealed parliamentary and municipal rights; because every resident and responsible householder possessed the parliamentary and municipal elective franchise, from the earliest periods of authentic history, up to the dynasty of the Stuarts; but such statutes were a confirmation of the unconstitutional rights of the non-residents.

JOHN.  
1190—1216.

The early charters, Parliament Rolls, and Parliament Writs, analogous to the Anglo-Saxon laws, proceed on the assumption that all boroughs were essentially the same. Thus, in the reign of Henry I., in a grant to the prior of Dunstable, it is directed, that "whosoever came to inhabit there, should have land at 12*d.* per acre, and enjoy the same privileges and freedoms as the city of London, or any other *ancient city*<sup>2</sup>." Again, in 5 John, Lynn was created a free borough, and directed, like Ipswich and Huntingdon, "to have all the liberties and free customs which free boroughs had<sup>3</sup>."

Boroughs essentially the same.

In the Hundred Rolls of 2 Edward I., twenty-four jurors for Exeter deposed to their right to the return of writs, the assize of bread and ale, and all that they enjoyed before and after the conquest of England, including the liberties and free customs of London, &c.

The grants in the *Cartæ Antiquæ*, and Charter and Patent Rolls, are indiscriminately directed to the "citizens," "burgesses," "men," "honest men," "freemen," "free and lawful men," "good men," and those to the Cinque Ports, were given to the "barons."

Grants among the *Cartæ Antiquæ* directed to the citizens, burgesses, &c.

None of these early charters define or provide for the creation of burgesses; but leave that important part of their constitution, to the provisions and regulations of the common law.

The essential requisite for the constitution of a freeman was "birth," or services incompatible with "villainage;" but the mere fact of "birth" or "service" did not, *per se*, invest

Essential requisite for the constitution of a freeman.

<sup>1</sup> M. and S. Hist. Boroughs, 1774, 1775.

<sup>2</sup> Ibid. i. 310.

<sup>3</sup> Rot. Cart. 5 Joh. m. 14; et vide etiam Rot. Cart. 6 Joh.

JOHN.  
1199—1216.

Responsible resi-  
ancy requisite  
for local fran-  
chises.

a person with the right of enjoying the privileges of a burgess. A freeman to have partaken of the chartered franchises of a borough, must have been a resiant, presented, sworn, and enrolled by the jury at the leet.

But mere "resiancy" did not, *per se*, confer an incohere right to the borough privileges, unless it were "responsible resiancy."

In the Book of Assise<sup>4</sup>, it was held that citizens of London were those, who were born and heritable in the same city by descent of inheritance, or who were resiants and taxable to scot and lot. And this franchise was so declared, and claimed in eyre; and it was by them prayed that this should not extend to any other persons.

On a petition to parliament in the reign of Henry IV., relative to the improper admission of freemen in London, the king, by the advice of parliament, declared "that no one ought to enjoy such franchise if he were not a citizen, resiant, and abiding within the city; and that all others abiding in all other cities, boroughs, and towns, should have and enjoy their franchises to them granted<sup>5</sup>;" and analogous principles were embodied in Stat. 1 Henry V., c. 1.

In 13 Edward II., an inquisition, "*ad quod damnum*," was issued, to certify whether it would be to the prejudice of the king or any other, that it should be granted to Nicholas de Tewxbury, that the town of Clifton—Dartmouth—Hardness—should be a *free borough*; and the men *inhabiting*, and hereafter to inhabit, should for ever be free burgesses: and that they should not be placed in assizes or juries without the borough, by reason of their foreign tenures, as long as they remained in the town.

To which the jurors found, that Dartmouth was a free borough in the time of Henry I., and "*that all persons residing ('manentes') in it were free burgesses*;" and that it would not be prejudicial to the king, that the said liberties should be granted.

So likewise in a record relative to Southampton, in the reign of Henry VI., being for a year and a day in a borough, and paying scot and lot, was held to constitute a burgess<sup>6</sup>.

The same principle of resiancy is recognised in the Canon

<sup>4</sup> 38 Edward III. plac. 18. Year Book, 45 Edward III. fol. 26.

<sup>5</sup> Rot. Parl. m. 1, p. 646. Stat. 1 Henry V. c. 1.

<sup>6</sup> Rot. Cart. Henry VI. n. 22. Mad: Fir. Bur. 208.

law. By the constitution of Archbishop Stratford, made at London in 16 Edward III., it was provided that no other person should suffer ecclesiastical punishment but in the place where he inhabited; first, because there his offence was known, and next, on the ground of unnecessary trouble and expense to the party punished<sup>7</sup>.

Peers, ecclesiastics, minors, females, villains, persons of infamous characters, and those who from poverty or other causes did not contribute to the borough burdens, were excluded from the local franchises.

"Common councils" are generally conceived to have immemorially exercised a discretionary and unrestrained will; but their independent and exclusive powers were usurpations.

In early records, the term "common council" did not relate to a body having that name, but to the act being done by the "common consent," or "council," of the town; and, in this sense, the term was applied to any deliberative body of men: thus the king did acts by the common council of the archbishops, prelates, and barons<sup>8</sup>. The common council of the clergy, laity, counties, hundreds, and towns, are indiscriminately mentioned as acting by their "common council".

Where population increased to any considerable extent, their deliberative acts must of necessity be discharged by a deputed authority. The constitution of this body may be most pernicious, or most beneficial; but it is almost impossible for a secret, irresponsible, and permanent collective body, to discharge their functions upon any principle of equity: because history affords evidence of the fact, that where political and private interests can be served by such bodies, no oaths, no sense of decency, no regard for public opinion, can prevent disgraceful violations of their solemn trusts.

The ancient municipal system, in the admission of burgesses, was not liable to these animadversions. They delegated their authority to the juries at the leet<sup>10</sup>, the election not being of an arbitrary nature, and guided only by whim, interest, servility, or caprice, but made by a jury indiscriminately selected from the inhabitants, who were bound to the

JOHN.  
1199—1216.

Constitution of  
Archbishop  
Stratford, A. D.  
1342.

Persons excluded  
from the local  
franchises.

Common coun-  
cils.

Ancient admis-  
sions of bur-  
gesses.

<sup>7</sup> Lynd. in fine, 52.

<sup>8</sup> Mag. Char. et patentes Regis de Moneta. Wilk. 360.

<sup>9</sup> Laws of Henry I. granted to Newcastle. M. and S. Hist. Boroughs, 302, 387, 551, 590.

<sup>10</sup> M. and S. Hist. Boroughs, 194, 551, 1733.



JOHN.

1189—1216.

Acquisition of  
burgess-ship not  
solicited previous  
to the Tudor  
dynasty.

Power of reject-  
ing a freeman.

Enforcement of  
local burdens  
and privileges.

Origin of fines for  
the admission to  
burgess-ship.

Principal liber-  
ties granted in  
the early borough  
charters, could  
not have applied  
to non-residents.

public by their oaths to render justice between the inhabitants and the freeman, as to his fitness in character and means.

Previous to the Tudor dynasty, the mere acquisition of burgess-ship was not considered an object of solicitude, except perhaps by those who were engaged in mercantile pursuits; for the burdens of the borough, which in many instances were so grievous as to cause depopulation, were borne by those only who derived advantages from the royal grants; and consequently innumerable entries occur on all leet rolls, that "A. B. was an inhabitant, ought to be a burgess, and be in lot and scot," and, upon such presentment, A. B. was compelled to assume that station.

It was proper that the jury should have the discretionary power of rejection, because, upon the admission of a stranger, the inhabitants became responsible for his acts, and his support in case of poverty; and they rendered themselves liable to amercement at the suit of the lord, if they improperly admitted a fugitive villain, or a person of infamous character.

It was also just that they should have the power of compelling persons who came to reside among them to become burgesses, and bear their proportion towards the burdens of the town; for otherwise such persons would have had the benefit of the charters of the borough, without making any return for the advantages so enjoyed.

The burgesses were also in the habit of requiring fines from persons whom they admitted to burgess-ship, and it was but reasonable they should have that power; for the borough, on its separation from the county, had to provide for its own disbursements, for which purpose the burgesses had a common stock. There was therefore no injustice in calling upon a stranger, on his coming to the town, to contribute to that stock, according to the necessities of the place, and his own pecuniary resources; and the amount of the fine was simply a matter of equitable arrangement between the stranger and the burgesses<sup>11</sup>.

The principal liberties granted in the early charters are exclusive jurisdiction, a merchant guild, the appointment of various officers for the administration of justice, fairs and markets, with freedom from all tolls; in fact, all the privileges granted by the borough charters were of a local character in every respect.

<sup>11</sup> M. and S. Hist. Boroughs, 1289, 1296.

It is evident the franchises in these charters could never have constitutionally extended to persons "non-resident" within the cities or boroughs. The grant of exemption from toll was usually contained in all borough charters; if limited to "inhabitant householders" within the borough paying scot and lot, a reasonable cause may be assigned; for the contributing to the public exigences in one place would be an adequate consideration, and be a release from such burdens in others; the inhabitants of which would, in the same manner, be reciprocally exonerated.

If resident and non-resident persons could be indiscriminately admitted as burgesses, and, as such, entitled to exemption from toll, the consideration for it would cease to exist; and any one place might exercise the power of admitting non-resident freemen to such an extent, as to destroy the right to toll in all other places, and materially interfere with a valuable fiscal receipt.

The grants of exclusive jurisdiction must, from its very nature, have been confined to the inhabitants, and could not extend to non-residents, otherwise, by their general admission as freemen, the king's jurisdiction might have been excluded over an unlimited number of his subjects.

It has been assumed by those, whose minds are incapable of overcoming the delusions of fancy, that the members of the "merchant guilds" and the "burgesses," were one and the same body<sup>12</sup>; but such guilds were distinct from the city and

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Franchises in charters could not have extended to non-residents.

Merchant guilds distinct from boroughs.

<sup>12</sup> The term "Guild" meant only originally the common payment made by the inhabitants of the several districts into which the country was divided, whether of counties, hundreds, cities, or boroughs, without reference to any idea of incorporation; because, generally speaking, the part of the county not included in any privileged district, was called the "geldable." And the term "geldavit," in Domesday, is applied to all the several classes of districts.

In A. D. 1308, there is a distinct instance of the use of the word in this sense. Thus the king, desirous of granting that Frampton, in Gloucestershire, should be a free borough, directs by writ of "ad quod damnum," that it should be inquired to what the aforesaid town is "geldable" to the king, and what it renders with certainty.

The franchises and the *geldable* are also contradistinguished from each other in the Sixth Year Book (fol. 6 B, pl. 30, M. T.). Error is assigned, for that the sheriff commanded the bailiffs of the *franchise* to make all the pannel, when one of the three towns was in the *geldable*; in which town the sheriff ought himself to make the array.

So likewise in Stat. 19 Henry VII., c. 23, the merchants of the Hanse are described as the merchants of the Hanse of Almain, having a house in the city commonly called "Guillhallda Teutonicorum."

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borough rights,—dependant upon usages peculiar to those institutions,—and were altogether distinct from the county and borough jurisdictions established under the common law<sup>13</sup>.

Thus, in the charter which Stephen granted to the inhabitants of Chichester<sup>14</sup>, he confirmed to them “all the customs of their borough and merchant guild, as they had them in the time of King William.” In 22 Henry II., the burgesses of Totness paid a fine of five marks “for setting up a guild without authority<sup>15</sup>.” This fact irresistibly establishing the distinction of a mere guild from a borough, for Totness was a borough in the time of William I.

Partial enjoyment of borough franchises.

At the period when the “*liberi homines*” of the common law were admitted in accordance with ancient principles, the burgesses were in the habit of admitting “strangers” to the partial enjoyment of the borough rights, for the purpose of trading, having previously required a pecuniary contribution, and this perhaps was the original cause of the confusion in the different classes of freemen<sup>16</sup>.

Freedom of apprentices had not their origin from corporate principles.

It has been erroneously assumed that apprentices had their origin from corporate principles, but the fact is otherwise. It is from the combined effect of the common and statute law, and from no other source, that apprentices have derived their existence<sup>17</sup>.

Interference of mayor, not in respect of any corporate right.

The interference of the mayor or chief officer of the borough in the binding of apprentices, was not in respect of any corporate right, but as a precautionary measure for the purpose of ascertaining, whether the apprentice was “free” or “bond,” so that neither the lord nor the burgesses might be damaged by any improper admission.

A villain could enter into no contract with his lord.

A villain could enter into no contract with his lord whilst villainage subsisted; therefore the relation of master and apprentice would have negated the inference of that of

<sup>13</sup> Domesday, fol. 3, 230. Inspec. Chart. Wallingford, 51 Henry III., Tur. Lond. Memb. 10, n. 4. 2 Hearne, Lib. Niger, 816. Mad. Fir. Bur. 95, 96. 4 Rymer, Fœd. 382. 6 Year Book, fol. 6 B, pl. 30. Stat. 15 Henry VI. c. 6; 21 Henry VI. c. 10. Pet. Parl. 10 Henry VI. n. 9, 417. Stat. 11 Henry VII. c. 9; 19 Henry VII. c. 23; 27 Henry VIII. c. 26.

<sup>14</sup> M. and S. Hist. Boroughs, 320.

<sup>15</sup> Mad. Exch. 391.

<sup>16</sup> M. and S. Hist. Boroughs, 117.

<sup>17</sup> Ken. Par. Ant. Gloss. verb. *App.* Lib. Ass. 83 B, fol. 18. Stat. 5 Richard II. Liber Niger, fol. 66. Stat. 17 Henry IV. Pet. Parl. 8 Henry VI. n. 20, p. 354. Stat. 26 Henry VIII. c. 16; 5 Eliz. c. 4; 13 and 14 Car. II. Anon. 1 Lev. 12. M. and S. Hist. Boroughs, 235, 698, 722—727, 762—765, 1099, 1100.

lord and villain. If the apprentice served seven years unclaimed, it was clear he could not be a villain, because he must have resided away from his lord for that period, and such an absence was, of itself, a bar to the writ "de nativo replegiando:" a deed therefore which established these facts, was, by the principles of the common law, an irresistible proof of freedom.

The jury at the leet were bound to present every person, who had served such an apprenticeship, as a "freeman;" and accordingly we find, upon the leet rolls at Stockbridge, Yarmouth, and Lynn, persons presented as "freemen by apprenticeship."

In fact, the language, principles, and practice of the common law, whether relating to the poor or the rich, the peasant or the judge, the resiant or the vagrant, the civil or criminal jurisdiction, the duties in the county at large, or the particular privileges in cities, boroughs, or franchises, all had one common origin or object,—local permanent residence.

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Leet juries bound to present apprentices as freemen.

Borough privileges applied to local permanent residence.

#### SECTION IV.

HENRY III., October 19, A. D. 1216,—November 16, A. D. 1272.

1. General Observations.
2. The Great Charters.

3. Legislative Assemblies.
4. Administration of Justice.

#### 1. *General Observations.*

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Upon the accession of Henry, the country was in a distracted state, arising not only from the minority of the sovereign, but from the disaffection of a considerable party, who had sworn allegiance to Lewis, son of the King of France. These circumstances induced every possible effort to conciliate the country, by confirming the ancient national franchises.

Distracted state of the country.

The weakness and misconduct of the king, his necessities, and the distress of the country proceeding from various causes, with the power and ambition of individuals, involved him in great difficulties, urged him to arbitrary conduct, and gave rise to that opposition which controlled his powers, produced a civil war, at one time almost annihilated the royal authority, and finally led to the gradual establishment of that system of representative government, which partially prevailed in this

Misconduct of Henry.

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1216—1272.

Publication of  
legislative acts.

Prerogative of  
the crown.

Continued exist-  
ence of councils.

Situation of  
Henry, different  
from that of his  
predecessors.

Loss of Nor-  
mandy made the  
crown dependant  
on England.

reign, and of which the constitution of the legislature afterwards formed an essential part.

A royal charter was the usual form in which legislative acts had been announced to the people, and it is very questionable whether, up to this period, any absolute or controlling power, except "brute force," existed since the Anglo-Saxon dynasty, which interfered with the absolute exercise of the royal prerogative.

The uncivilized state of society being such, that force was more prevalent than laws, and a resolution, though taken by a majority of a legal assembly, could not have been executed, if it opposed the will of the more powerful minority.

The crown, not being enabled to have its commands carried into execution, without the co-operation of the great landed proprietors, it became imperative, when new laws were to be enacted, that the most influential men should be assembled, in order to obtain their acquiescence and consequent support.

That "councils" always existed from the accession of William I., no doubt can exist; but there is no record to prove that the members attended in a direct representative capacity, or that the king was exclusively confined to summon any particular class.

The great necessities of Henry III., and his frequent recurrence to his people to supply those necessities, placed him in a different situation from that in which many of his predecessors, and particularly William I. and his sons, had been.

They seldom, perhaps never, had occasion to seek for voluntary aid, by convening an assembly for pecuniary purposes, which might peaceably stipulate for a redress of grievances, and purchase concessions from their sovereign by a pecuniary grant<sup>1</sup>. The assemblies, convened by Henry previous to 1258, appear to have often aimed at such concessions, but generally failed in obtaining more than promises to observe the Great Charter, and generally to administer duly the law of the land.

But nothing so much accelerated the operation of causes, tending to constitutional changes, as the separation of Normandy from England, the former having produced a revenue sufficient to support itself, and also contributed to the dignity of the kings of England, who frequently resided there for lengthened periods.

<sup>1</sup> 1 Rep. Dig. Peer. 97.

By the loss of Normandy, the kings of England, instead of having a power and influence in Normandy, which, in its consequences, increased their power and influence in England, were induced to rely on their subjects in England, even for the preservation of their other territories in France; and though their possession of those territories tended to lessen the power of the French monarchy, and enabled the kings of England to invade the territories of the kings of France, yet in England that possession rendered the crown more dependant on the people, by the expenses which its preservation continually required.

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## 2. *The Great Charters.*

One of the first acts of the advisers of Henry, was to issue a charter<sup>1</sup> in his name. It is in a great measure a transcript of the charter of John, but it omits the clause respecting scutage and aid not to be assessed “*nisi per commune concilium regni nostri*”; neither were the full privileges of elections in the clergy, nor the liberty of going out of the kingdom without the royal consent<sup>2</sup>, renewed<sup>3</sup>.

First charter of  
Henry III.

It appears extraordinary that the deviations in this first charter of Henry, and indeed in a great degree in all his subsequent charters, from the charter of John, should have been so little noticed.

The non-insertion of the provisions that no scutage, nor any aid (except in three specified cases), should be assessed, unless by the authority of the common council of the realm; that the aids to be assessed in the three specified cases should be reasonable aids; and that aids to be required of the city of London should also be reasonable aids, (which seems to be

Omissions from  
the Great  
Charter.

<sup>1</sup> A copy of this charter is printed in the authorized collection of the Statutes from a charter under seal, preserved in the archives of Durham Cathedral.

<sup>2</sup> 1 Rymer, 215. 2 Hume, 246.

<sup>3</sup> From a letter addressed in the king's name to the justiciar of Ireland, announcing the death of his father, and his own accession to the throne, it is stated, “*Convenerunt apud Gloucestr̄ plures regni nostri magnates, episcopi, abbates, comites, et barones, qui patri nostro viventi semper astiterunt fideliter, et devotē, et alii quamplurimi; applaudentibus clero et populo, &c., puplice funus in regem Anglię inuncti, et coronati, fidelitate et homagio omnium illorum nobis exhibitis.*” From whence it appears, that the word “*magnates*” included the “*prelates*,” “*earls*,” and “*barons*,” and excluded those termed “*alii quamplurimi*.” *Fœdera*, N. E. tom. i. 145; et vide ib. 146.

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the true construction of that part of the charter of John), and of the special stipulations, providing for the manner in which a common council of the realm was to be convened, for the purpose of assessing extraordinary aids and scutages, seem all to have been omissions of most important articles of the former charter: and though in the disturbed state of the country, when the first charter of Henry was issued, it might have been deemed prudent to avoid discussing immediately, what might be esteemed "*capitula gravia et dubitabilia*" in the charter of John, it seems extraordinary that the performance of the promise, that they should thereafter be fully considered, should never have been required.

Second charter  
of Henry.

This charter of Henry was confirmed in the ensuing year, with the addition of some articles to prevent the oppressions of the sheriffs: and also with an additional charter of forests, by which offences in the forests were declared to be no longer capital, but punishable by fine and imprisonment, &c.; and the proprietors of lands recovered the power of cutting and using their own wood at their pleasure<sup>4</sup>.

Charter of  
forests.

The third charter  
of Henry.

The charter of 9 Henry III., which has been always deemed "the great charter of the liberties of the kingdom," omits, as the former two charters of Henry did, the clause in the charter of John, respecting aids, scutage, and providing for the constitution of a "*commune concilium*" for assessing aids and scutage, without assigning the reason for the omission, which is assigned in the first charter of Henry: but adding, as in his second charter, "*Scutagium decetero capiatur sicut capi solebat, tempore Regis Henrici avi nostri*," thus leaving the assessment of extraordinary aids without any special provision.

Grant of a fif-  
teenth.

At the conclusion of this charter, it is also added,—"*Pro hac autem concessione et donatione libertatum istarum, et aliarum libertatum contentarum in carta nostra de libertatibus foreste. Archiepiscopi, episcopi, abbates, priores, comites, barones, milites, libere tenentes, et omnes de regno nostro, dederunt nobis quintam decimam partem omnium mobilium suorum*"<sup>5</sup>.

The charter does  
not express the

The grant of this extraordinary aid, being a fifteenth of the

<sup>4</sup> 1 Rymer, 215. 2 Hume, 147. W. Malms. l. 3, p. 63. II. Knyghton, apud X. Script. col. 2354. Dial. de Scac. l. 1, c. 11. 6 Henry, 85. 2 Law Tracts, 93.

<sup>5</sup> Annual. Burt. 271—278. Stat. 9 Henry III., c. 37.

moveables of all persons in the kingdom, is expressed in this instrument to have been made by all the persons by whom it was to be paid; but the instrument does not express in what manner the consent of all was given to the grant, or that any assembly was summoned for that purpose. The consent could not have been given by all personally, though it might have been given by some personally, and as to the rest, by their representatives. It may therefore be inferred from the terms of the instrument, that the consent was given by some assembly convened under the king's authority, and deemed competent to bind all who were not members of that assembly. If representatives of counties, cities, and boroughs then existed, that fact would have been noticed.

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**1216—1272.**

manner by which  
the enacting par-  
ties gave their  
consent.

### 3. *Legislative Assemblies.*

The system of representation, although little practised, was not unknown; and shortly after the promulgation of the third charter of Henry III., the fact of actual appearance by elected representatives of bodies of men occurs, but which merely demonstrates that a representation by election of knights, who were to speak for a county at large, had been adopted.

First actual ap-  
pearance, by  
elected represen-  
tatives, of bodies  
of men.

The object of the proceeding seems to have been to bring before the "magnates," composing the assembly to be convened at Lincoln, knights, elected by the "milites et probi homines" of the counties to which the writ was sent, as accusers, and the sheriffs to whom the writs were sent, as persons accused, to answer before the "magnates" to the charges which should be made against them, upon articles contained in the charter of liberties<sup>1</sup>.

But the election of knights of the shire, to transact the business of the county, was of ancient origin; if the king wished to ascertain his own rights, the wrongs of the people, or the peculations of his officers, he was accustomed to authorize a commission of knights in each shire, either named by himself, or elected in the county court, to proceed from hundred to hundred, to make inquiries upon oath, and to lay the result of their labours before him<sup>2</sup>, as was done in the case of Domesday.

Election of  
knights to trans-  
act the county  
business, was of  
ancient origin.

<sup>1</sup> Claus. 10 Hen. 3, in dors. m. 13.

<sup>2</sup> 2 Lingard, 368. Hoveden, 343. Brady, App. II. No. 149, 150, 196.



HENRY III.  
1218—1272.

Subsidy collected  
under the in-  
spection of the  
judges.

A writ of 17 John, enjoined the sheriffs to elect twelve knights from their respective counties, in the first county court, *de ipso comitatu*, to inquire into bad customs<sup>3</sup>.

In 1206, the subsidy was collected under the inspection of the itinerant judges; but the method was accompanied with inconvenience and delay. But, in 1220, writs were sent to the sheriff, appointing him the collector, in conjunction with two knights, to be chosen in a full court of the county, with the consent of all the suitors<sup>4</sup>;—"in pleno comitatu de voluntate et consilio eorum de comitatu."

Therefore at this period, as far as regards "counties," one additional step only was required to introduce them into the "Great Council" as the representatives of their electors, vested with the power of granting money, and of petitioning for redress of grievances; and when they ultimately became members of parliament, they received the same remuneration in "going, staying, and returning," as had been assigned them on former occasions.

Component  
members of the  
"Parliament"  
of 1246.

In 1246, "Rex, missis literis suis, totius regni magnates convocavit." Matthew Paris, in alluding to this assembly, says, "Convenientibus igitur ad *Parliamentum* memoratum totius regni magnatibus, &c."

This assembly consisted, apparently, only of bishops, earls, barons, abbots, and priors: the king addressing, first the bishops, then the earls and barons, and then the abbots and priors.

The grievances of the country from papal exactions were detailed, and letters were addressed to the pope, from the bishops by themselves, from the abbots and priors by themselves, and from the earls and the rest of the kingdom by themselves; the earls being named, in their letters to the pope, with these additional words, "et alii totius regni Angliæ, barones, procures, et magnates et nobiles portuum maris habitatores, necnon et clerus et populus universus."

All the persons thus specified could not have been present at this assembly, and can only be deemed to have concurred through the medium of the earls and barons.

"Portuum maris  
habitatores."

The words "portuum maris habitatores," may have been used to describe those commonly called the barons of the Cinque Ports, though capable of being applied more exten-

<sup>3</sup> Vide ante 56; et *Fœdera*, N. E. tom. i. 130, 133, 134.

<sup>4</sup> Brady, App. II. No. 83; et tom. i. App. 41. 2 Lingard, 309.

sively; and if the word "barones" was intended to include all who held of the king in chief, and if all such were required to be summoned for granting an aid by the charter of John, such a convention may have been considered as representing the whole kingdom, being, with the king, the lords of all landholders: but the elected representatives of citizens and burgesses could not have been described by the word "barones."

It also seems, that to constitute a "parliament," either during this period, or in the reign of John, the presence of "citizens" and "burgesses" was not deemed requisite. Thus in a writ of 28 Henry III., the sheriff of Northamptonshire was directed not to permit in his bailiwick the user of any liberties belonging to the crown, unless they had been used before "*Parliamentum Runimede quod fuit inter Dominum Johannem regem, patrum nostrum, et barones suos Angliæ*,"—it is clear that at Runimede no representatives of cities or boroughs were present.

HENRY III.  
1216—1272.

Citizens and burgesses not requisite to compose a "Parliament."

From the tenour of the writs of 38 Henry III.,<sup>5</sup> it seems an assembly was convened at London at which persons, called in those writs "comites," "barones," and "magnates," were intended to be present; and that, in such assembly, *two* knights, elected by each of the counties to which the writs were directed, were also intended to be present; and that either from those elected knights, or from the general assembly of "comites," "barones," and "magnates," together with the elected knights, the king proposed to demand an aid, and it may be presumed the king considered that assembly competent to grant him the aid which he demanded: but such writs were silent as to any election of citizens and burgesses, or representatives of the Cinque Ports; and there is no evidence that any knights were elected, or assembled.

Barons and Knights summoned to grant an aid, but no mention of citizens or burgesses.

Before and in the forty-second year of this reign, the king's pecuniary necessities were urgent, and were increased by the nomination of his son Edmund to succeed to the throne of Sicily, and by the exorbitant demands of the pope. The distresses of the king, and the refusal of his people to supply the funds necessary to relieve those distresses, had led him to adopt very oppressive measures; and the conduct of his half-

Unpopularity of the king.

<sup>5</sup> Petyt's Rights, &c., 33. Brady, *Introd. Eng. Hist.* 71.

<sup>6</sup> 1 Rep. *Peer.* 96, et vide *Claus.* 38 Henry III. m. 7, 12, dors. et in dors. m. 14, 13, 6. 2 Prynn 33.

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1216—1272.

brothers, and his disposition to give the preference to foreigners more subservient to his caprices than his own subjects, had made him generally unpopular; and those circumstances were introductory of increased national misfortunes.

Barons demand  
redress of griev-  
ances.

The barons, incited by the Earl of Leicester, assembled in arms, and demanded a redress of grievances.

Assembly of  
"proceres et  
fideles regni."

The king, having no alternative, issued two writs<sup>7</sup>; the first stated that, for important business touching himself and the kingdom, he had required "*proceres et fideles regni*" to meet him at London, and that treating with them upon such business, as well as the prosecution of the business of Sicily, they had answered that the state of the kingdom should be ordered, rectified, and confirmed.

Appointment of  
"twenty-four"  
to redress griev-  
ances.

The second writ<sup>8</sup> stated, that he had yielded "*proceribus et magnatibus regni*," and taken an oath, that by twelve persons, described by the words "*fideles de concilio nostro*," already elected, and by other twelve, described by the words, "*fideles nostros*" (without the words "*de concilio nostro*") "*electos ex parte procerum ipsorum qui apud Oxon<sup>a</sup> a festo pentecostes proximo futuro in unum mensem convenient*," the state of the kingdom should be ordered, rectified, and reformed, and that if any of those elected of the king's part should be absent, it should be lawful for those who should be present to substitute others in the place of those absent, and in like manner it should be done, "*ex parte prædictorum procerum et fidelium nostrorum*." In a subsequent part of this instrument it is added, "*Promiserunt et etiam comites et barones memorati quod expletis negociis superius tactis, bona fide laborabunt ad hoc, quod auxilium nobis commune præstetur a communitate regni nostri*"<sup>9</sup>.

"Fideles," per-  
sons of the first  
rank.

The twelve "*fideles*," stated in this instrument to have been elected by the king, and the twelve "*fideles*" elected by the "*proceres*," were persons of the first rank in the kingdom; and the persons who, in the former instrument, are called "*proceres et fideles*," appear in this to be first called "*proceres et magnati regni*," and then "*comites et barones memorati*."

Regular consti-  
tution of "lords  
spiritual and  
temporal" not in  
existence.

These documents establish that a regular constitution of parliament, consisting of lords spiritual and temporal, and of knights, citizens, and burgesses, forming, under the king, one

<sup>7</sup> Rot. Pat. 42 Henry III. *Fœdera*, N. E. tom. i. 370.

<sup>8</sup> *Fœdera*, N. E. tom. i. 371. Rot. Pat. 42 Henry III.

<sup>9</sup> Vide etiam 2 Lingard, 235.

legislative body, constituted for the purpose of consultation with the king on the general concerns of the kingdom, did not then exist<sup>10</sup>.

HENRY III.  
1216—1272.

Provisions of  
Oxford.

The parliament which assembled at Oxford in 42 Henry III., enacted, that the reformation and ordinance of the state of the kingdom was to be made by the "twenty-four,"—"secundum quod melius viderint expediri:" the king taking an oath to maintain their ordinances<sup>11</sup>, and such was the degradation of the king, that he could not nominate his council; the twenty-four<sup>12</sup> named by the king and the barons, electing four persons of their number to elect his council, and the king authorized such persons to form a council accordingly, and, when formed, consisting of fifteen members, it composed a majority of those who espoused the cause of the barons<sup>13</sup>,—in fact, the king was in an absolute state of duress<sup>14</sup>.

The documents referring to the persons who composed the parliament of Oxford, generally describe them as consisting of "prelates," "carls," and "barons;" and in the transactions which followed previous to the "Mise of Lewes," the persons taking upon themselves to act for the people of England, to deal for that people with the king, and especially to submit to the judgment of the King of France, whether the Provisions of Oxford (an act of the legislature) should remain in full force, or should be qualified or repealed, are styled "barons."

Component  
members of the  
parliament of  
Oxford.

Faction must at first be popular, and popularity cannot be acquired, except under the semblance of virtue and public spirit; consequently, the barons required the king to confirm the Great Charter; they likewise ordained that four knights should be chosen by the freeholders of every county, to hear all complaints of misconduct of sheriffs and other grievances, and attend the ensuing parliament, in order to give information to that assembly of the state of their particular counties<sup>15</sup>; that three sessions of parliament should be regularly held every year, in the months of February, June, and October; that a new sheriff should be annually elected by the votes of the freeholders in each county<sup>16</sup>; that

Faction assumes  
the semblance of  
virtue and public  
spirit.

Grievances re-  
dressed by the  
"twenty-four."

<sup>10</sup> Annals of Burton. Brad. Hist. 627. Claus. 44 Henry III. m. 27 D.

<sup>11</sup> 1 Rymer, 655. Chron. Dunst. 334. Knyghton, 2445. 2 Hume, 184.

<sup>12</sup> Rot. Pat. 42 Henry III. m. 6. Brad. Hist. 219, 220.

<sup>13</sup> Fœdera, N. E. tom. i. 377.

<sup>14</sup> 2 Hume, 183.

<sup>15</sup> Fœdera, N. E. tom. i. 375. M. Paris, 657. Ann. Burt. 412.

<sup>16</sup> Chron. Dunst. 336.

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the sheriffs, treasurer, chancellor, justiciary, should annually give in their accounts; that the sheriffs should have no power of fining the barons who did not attend the courts, or the circuits of the justiciaries; that no heirs should be committed to the wardship of foreigners, and no castles intrusted to their custody; and that no new warrens or forests should be created, nor the revenues of any counties or hundreds be let to farm<sup>17</sup>.

Tyranny of the  
barons.

The barons having thus performed some good deeds, which, "like Abraham's faith, may hold the place of righteousness," assumed an absolute power over the country;—they required the appointment of the great officers of state, the possession of the royal castles, and the punishment of death was ordained against those who should oppose directly or indirectly what they should ordain.

Subjects sworn  
to obey all ordi-  
nances, known  
or unknown.

All subjects were obliged to take an oath, under the penalty of being declared public enemies, that they would obey and execute all their regulations, both known, and unknown.

Delegation by  
Parliament of all  
their powers.

All persons included under "*tut le commun de la terre*," were to be represented by twelve "*prodes hommes*," who were elected at the parliament of Oxford by "*Les Barons*," and "*le commun*" were *absolutely bound by every act* that the twelve should perform, in conjunction with the council, and which was intended as a provision to spare "*le cust del commun*."

The twelve thus appointed to represent "*le commun*" seem also to have been appointed permanently, as there is no provision for, and no trace of a future appointment; and yet "*le commun*" were to be bound to hold as established, whatever the twelve should do in every parliament, at which they should attend<sup>18</sup>.

Distinction be-  
tween a spirit of  
liberty and fac-  
tion.

A spirit of liberty will be exclusively directed to national objects, and regardless of personal interests; on the contrary a spirit of faction will be wholly concerned about the latter, and very indifferent about the former. If the actions of "*Les Barons*" be analysed by this principle, it will be perceived that selfish ambition and the jarring interests of faction dictated their actions, although artfully veiled under the assumed cloak of disinterested patriotism.

<sup>17</sup> 2 Hume, 184. 2 Lingard, 326, 327.

<sup>18</sup> Annal. Burt. 407, 411, 413, 414, 415, 416. 2 Brady, App. No. 190, 191, 192, 193, 194. Fœdera, N. E. tom. i. 377, 378.

It is likewise an undeniable axiom established by history, that those public men who have sought to acquire the basest objects, are those who have inflamed the bad passions of the people, under the "war-whoop of liberty," as exemplified in the modern histories of Cromwell, Robespierre, and Napoleon; in fact, the practical principles of republican leaders have always been intolerance, and, while asking equality, have aimed at selfish dominion.

After the separation of the parliament of Oxford, the twenty-four named in that parliament to propose reforms in the government, and the council of fifteen (appointed in effect by the twenty-four), to whom all the powers of the crown were in substance delegated, and the twelve appointed to represent "*le commun*" in parliament, assumed to themselves the whole power, both of the crown and of the legislative assembly in parliament.

The king suffering under such unconstitutional restraints, made in the forty-fifth year of his reign, a general appeal to the nation<sup>19</sup>; and shortly after seems to have issued letters patent, granting a general pardon to those who had co-operated in such restraint<sup>20</sup>.

It appears, from writs issued at this period by the king, that the Earl of Leicester and his adherents had taken upon themselves to summon an assembly to be holden "*before themselves*," and also, for the purpose of conciliating the county freeholders, to summon *three* knights from each county south of Trent to treat with them, and not with the king; but there seems to have been no attempt to have convened representatives of cities and boroughs<sup>21</sup>. However, there is no authentic evidence to prove the assembly of the three knights from each county, or of the writs by which they were required to assemble.

The king, in the forty-sixth year of his reign<sup>22</sup>, issued a proclamation, declaring his resolution no longer to submit to the Provisions of Oxford, and recited the absolution from his engagements, which had been granted to him by Popes Alexander and Urban<sup>23</sup>; and afterwards the king and his

HENRY III.  
1216—1272.

Hypocrisy of republican leaders.

Barons assume the royal and legislative functions.

The king appeals to the nation.

Summons of "three knights" from each county.

The king disclaims the Provisions of Oxford.

<sup>19</sup> *Fœdera*, N. E. tom. i. 408, 409. Wikes, 51. West. 378. Claus. 45 Henry III. m. 19, dors. Cit. Carte, 127. 2 Lingard, 331. M. Paris, 668.

<sup>20</sup> *Fœdera*, N. E. tom. i. 411.

<sup>21</sup> Claus. 45 Henry III. m. 6, dors. Brady, Hist. App. 231.

<sup>22</sup> Claus. 46 Henry III. m. 11, dors. *Fœdera*, N. E. tom. i. 419.

<sup>23</sup> Rymer, 722, 723, 742, 746. Wikes, 55.

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1216—1272.

Award of Lewis.

opponents agreed to submit their differences to the award of Lewis, king of France<sup>24</sup>.

The "award of Lewis" does not allude to any assembly or class of persons engaged in a contest with the king, besides "barons," except the words "*alii quicumque præsentī compromisso consenserunt*," used in one clause<sup>25</sup>.

If the Provisions of Oxford had been made by a legislative assembly, to which other than "barons" had been parties, the submission to the award of the King of France would have been made by the same authority; but neither in the submission, nor in the subsequent offers of treaty and compromise, is there any allusion to the representatives of counties, cities, and boroughs, nor of an appeal to a legislative assembly<sup>26</sup>.

Mise of Lewes.

The first appeal, by parties contending in arms, to a "legislative assembly," was at the "Mise of Lewes," and a parliament, in 48 Henry III., assembled accordingly<sup>27</sup>, at which persons summoned by special writs, and also *four* knights as representatives for each of certain counties, were required to attend, not by writs to the sheriffs, but by writs to the "keepers of the peace"<sup>28</sup> of those counties; but the parliamentary proceedings of that period do not notice the presence of such knights, nor of any representatives of cities or boroughs, but are described as consisting of "prelates, earls, and barons."

Summons of four knights for certain counties.

At this parliament<sup>29</sup> certain regulations were enacted for the better government of the kingdom, but in effect retaining the power of the king in the possession of those, who were adverse to his person and authority<sup>30</sup>.

Parliament of 49 Henry III.

Under these circumstances was the parliament of 49 Henry III. convoked<sup>31</sup>, at which were peers, ecclesiastics, two knights from each county, and two deputies from each of certain cities and boroughs, such deputies never having previously

<sup>24</sup> *Fœdera*, N. E. tom. i. 432. *M. Paris*, 668. *Wykes*, 58. 1 *Rymer*, 776, 778, 784. *W. Heming*, 580. *Annal. Wigorn.* 495. 2 *Lingard*, 338. 1 *Chron. Dunst.* 363. 2 *Hume*, 200.

<sup>25</sup> 1 *Rymer*, 776, 777. *Chron. T. Wykes*, 58. *Knyghton*, 246. 2 *Hume*, 201.

<sup>26</sup> *Fœdera*, N. E. tom. i. 435, 436, 437.

<sup>27</sup> *Ibid.* 441, 442, 443. *Rot. Pat.* 48 Henry III. *West.* 388. *Dunst.* 372. *Wikes*, 63.

<sup>28</sup> *Fœdera*, N. E. tom. i. 442.

<sup>29</sup> *Rot. Pat.* 48 Henry III. *Fœdera*, N. E. tom. i. 443.

<sup>30</sup> *Fœdera*, N. E. tom. i. 444. *Brady*, App. No. 213. 2 *Hume*, 208.

<sup>31</sup> *Claus. in dors.* m. 12; 11 dors. in seed; 11 dors.; in dors. 11; 10, 9, 6

been summoned; and the writs were addressed, not to the sheriffs, but to the boroughs.

The convention of this parliament was a mere "political trick;" because the number of lay lords summoned was only twenty-three, the number of ecclesiastics, who were partisans of Leicester<sup>32</sup>, was one hundred and twenty-two, including five deans, and many abbots and priors, whose successors were not afterwards summoned to parliament; but none of the earls or barons of the king's party appear to have been summoned, notwithstanding the avowed object, was the reformation of constitutional abuse<sup>33</sup>.

If the counties were in the custody of the "keepers of the peace," the influence of Leicester must have prevailed in the election of knights of the shires, even if made under the presidency of the sheriff in the county courts, and such cities and boroughs as were disposed towards the king, may not have been called upon to send representatives; the two cities of York and Lincoln, with the cinque ports, being only named in the record; but other cities might have been included under the words "et cæteris burgis Angliæ"<sup>34</sup>, and the entry on the roll is evidently inaccurate.

In the writs to the cinque ports, they were required to send four persons from each port to treat with the "king, prelates, and magnates," on the subjects mentioned in the writs, the representatives of shires, cities, and boroughs not being noticed.

The degradation of the crown, combined with the conduct of Leicester, had raised a powerful party for Henry<sup>35</sup>, and after the battle of Evesham<sup>36</sup>, the king was enabled to assume an arbitrary power<sup>37</sup>.

Whilst the king was at Winchester, an assembly which

HENRY III.  
1216—1272.

Number of lay lords and ecclesiastics.

Knights, citizens, and burgesses.

Writs to the Cinque Ports.

The king assumes arbitrary power.

<sup>32</sup> Chron. Dunst. 363. Chron. Waverley, 220. 2 Lingard, 348.

<sup>33</sup> *Fœdera*, N. E. tom. i. 449, 450.

<sup>34</sup> The corporation of London have a book called "*De Antiquis Legibus*," which contains notices in the form of annals of transactions in early times. In this book the meeting of parliament 49 Henry III. is thus described: "*Hoc anno, in octabis Sancti Hilarii, venerunt Londōn per summationem Domini Regis, omnes Episcopi, Abbates, Priores, Comites, Barones, totius Regni, et de quinque portibus, de qualibet civitate de Burgo IV. homines, ut essent ad Parliamentum.*"

<sup>35</sup> Wikes, 66. West. 394. Knyghton, 245. Ann. Waverl. 216. M. Paris, 671.

<sup>36</sup> Waverl. 219, 220. Dunst. 384. West. 395. Rishanger, cont. Paris, 855. Mailros, 231, 232.

<sup>37</sup> *Fœdera*, N. E. tom. i. 458.



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**1216—1272.**

acted legislatively was convened, but from the distracted state of the country, it is highly improbable that this assembly would have been summoned according to the precedent of 49 Henry III., or that it would have consisted, of any other persons, except those who were adherents to the king,—its chief object being to punish those who had opposed the crown<sup>38</sup>.

Dictum de Kenilworth.

It is stated, that during the siege of the castle of Kenilworth, the king held a parliament at Kenilworth, where the award called “Dictum de Kenilworth” was made, and which materially contributed to restore peace to the kingdom, and by which the Provisions of Oxford were annulled<sup>39</sup>.

According to the “Annals of Waverley<sup>40</sup>,” the assembly at Kenilworth, and the subsequent assembly at Northampton, were alone composed of prelates, earls, and barons; and it is improbable, under the then existing circumstances, a more popular assembly could have been convened.

Statute of Marleberge.

The “Statute of Marleberge,” and which forcibly describes the disturbed state of the country, appears to have been made in 52 Henry III., shortly after the surrender of London, and the Isle of Ely.

Its provisions have been always received as a part of the law of the land, and are the foundation of many parts of the existing law, though now appearing only in a copy entered in the Red Book of the Exchequer, and in copies preserved in the Cottonian and other collections of MSS.

Component members of the assembly at Marlborough.

The title given to these provisions imports they were made in the presence of the king, Prince Edward, and the pope’s legate, “convocatis discretioribus regni tam ex majoribus quam minoribus.” The continuation of the history attributed to Matthew Paris, mentions the assembly of a parliament at Marlborough, “in quo de assensu comitum et baronum edita sunt statuta quæ de Marleberge vocantur.” According to this historian, only earls and barons formed the assembly, or the lay part of it: but the writs in the register founded on the Statute of Marleberge, import that the statute was made “de communi consilio regni<sup>41</sup>.”

In fact, all existing records and early historians concur, that, after 49 Henry III., assemblies during this reign were

<sup>38</sup> *Fœdera*, N. E. tom. i. 462.

<sup>39</sup> West. 398. Wikes, 223. Dnist. 391, 392. 2 Lingard, 356.

<sup>40</sup> An. 1266.

<sup>41</sup> Reg. 174 B, &c.

convened, at which "prelates," "earls," and "barons," or persons styled "magnates" or "proceres," were present, and by whom all legislative measures were enacted.

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The proceedings of 49 Henry III. occurred during a civil war, when all who had taken part with the king in that war appear to have been proscribed; as the charter containing the pardon of the Earl of Leicester, and those adhering to him, makes no provision for the king's adherents, but leaves them unprotected from the persecution of their adversaries; and all the king's party who were of the rank of earl or baron, were excluded from the legislative assembly, some of them banished, and others required to attend in parliament as criminals.

State of the country, 49 Henry III.

The kingdom was in the utmost distress and misery, suffering under the ravages of war; the misfortune of intemperate seasons; and the interdiction of commerce, by the means employed by the discontented barons, to keep foreigners out of the kingdom.

The king and his adherents acted with as much violence in the persecution of the adherents of Leicester, as Leicester had exercised towards the king's adherents; in both instances the rage of party seems to have induced each side in its turn to look more to its own preponderancy, than to principles of constitutional law and justice.

Violence of the king and his adherents.

Under such circumstances, a measure so introduced, would be abandoned rather than persevered in, when those who had introduced it, had no longer power to act.

#### 4. *Administration of Justice.*

It appears from "Bracton," that the laws of England were principally, at this period, "*leges non scriptæ*," the foundation of what has since been called the "Common Law," as distinguished from the "Statute Law."

Improvements in the Common Law.

Considerable improvements had taken place in the laws, which is evident from a comparison of the treatise of "Glanville," who wrote in the reign of Henry II.; and "Bracton," who wrote in this reign:—and from the judicial records, it appears the pleadings were more perfect than heretofore<sup>1</sup>.

Several circumstances concurred to promote improvements in the common law; particularly the settlement of the Court

<sup>1</sup> Hale's Hist. Com. Law, c. 7, p. 156.

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of Common Pleas at Westminster: the retreat of the clergy, who were averse from the common law, both from the bench and from the bar, in obedience to the canons made A.D. 1217; the establishment of the Inns of Court, for the education of common law lawyers; the decline of trials by ordeal and single combat; and the statute subjecting pleaders to a fine for absurd and foolish pleading<sup>2</sup>.

Jurisprudence of the country protected individual interests.

The administration of justice between man and man, so far as it was not interrupted by occasional violence, proceeded in the ordinary forms; and the jurisprudence of the country protected individual interests more effectually, than did the institutions for the same purpose in most of the countries of Europe,—and the great division of society, continued, as during the Saxon and Norman eras, between “freemen” and “slaves.”

Question of Bastardy.

Council at Mer-  
ton, A.D. 1235

It was in this reign that the question of the bastardy of children born before the marriage of their parents was decided. By the custom of England, they were deprived of all title to the inheritance; and, by the civil and canon laws, they were equally legitimate with the children born in matrimony; and thence, as the cognizance of bastardy belonged to the spiritual courts, which followed the latter, and the right of inheritance was determined by the secular courts, which followed the former opinion, the two judicatures were brought into collision: and the bishops requested that the king's writs should no longer direct them to inquire especially, whether the individual in question, was born before or after marriage, but generally whether he were legitimate or not.

Spiritual courts  
object to the  
office of the  
common-law courts.

They objected to the practice of other courts; *first*, that it was contrary to the Roman and canon law; *secondly*, that it was unjust, because it deprived of the right of inheritance the issue of clandestine marriages, though such marriages were not annulled by any law; and *thirdly*, that it was inconsistent with itself; because, while it bastardized the child born, it legitimated the child that was only conceived, before marriage, though, in both cases, the moral guilt of the parents was exactly the same. But the barons replied, “Quod nolunt leges Anglie mutare, quo usitate sunt et approbate<sup>3</sup>.”

But if individuals were better secured from the violence and injustice of their fellow-subjects, they were proportionably

<sup>2</sup> Vide Statutes, *passim*. Barrington's Obs. on Stat. 52. Spelman and Wilkins, Concil. 1217. 1 Rymer, 228. 3 Henry, 99.

<sup>3</sup> Stat. 20 Henry III, c. 9. 2 Hume, 222, 223. 2 Lingard, 377, 378.

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1216—1272.Itinerant  
Justices.

more obnoxious to the passions and resentments of the government. Instead of the county, hundred, and baronial courts, over which the crown had little influence, the justice of the kingdom was almost exclusively exercised by the judges of the Curia Regis and the Exchequer, and by the justices itinerant in their circuits,—the latter of whom were sent through the kingdom, not to punish offenders, but to compound with them for their transactions; not to execute justice, but to collect fines<sup>4</sup>.

By these judges, who were more or less dependant upon the crown, and disposed, in general, to enforce and exact to the utmost all its rights and dues, the numerous penalties of the Saxon code were levied with a rigour and strictness unknown in Saxon times.

Open traffic of  
injustice.

Transgressions against the forest laws were visited with unrelenting severity; fines, redemptions, and compositions, extorted on the most unjust and frivolous pretences<sup>5</sup>; abuses of purveyance protected<sup>6</sup>; prerogatives vested in the crown for the public benefit, were perverted into engines of finance<sup>7</sup>; the injustice of those in authority connived at, till the culprits were rich enough to pay for their transgressions; the free gifts and writs of cities and boroughs converted into arbitrary tallages; and the military tenants themselves harassed and impoverished by the extension and perversion of the feudal incidents, to which their tenures made them liable. The poverty of the crown became an incentive to its rapacity, and the judges were the instruments of its exactions. In the Curia Regis, there was an open traffic of injustice; and the iters of the justices itinerant are only known to us at the present day, by the money they levied, and the fines they brought into the Exchequer<sup>8</sup>.

<sup>4</sup> M. Paris, 533, 652, 661, 786, 864.

<sup>5</sup> Ibid. 651, 652, 661, 758, 852, 863, 902.

<sup>6</sup> Ibid. 744.

<sup>7</sup> Ibid. 409, 620, 827, 935.

<sup>8</sup> 35 Edin. Rev., Art 1. 22, 23, passim.

## SECTION V.

EDWARD I., November 16, A. D. 1272,—July 7, A. D. 1307.

## 1. Improvements in the Law.

## 2. Legislative Assemblies.

1. *Improvements in the Law.*EDWARD I.  
1272—1307.

An extensive alteration in the condition of the people, or in circumstances, must at any time induce some changes of institutions, and render absolutely necessary a sensible modification of the laws.

Laws must be accommodated to the condition of society.

Laws must be accommodated, or laws will accommodate themselves to the growing necessities of mankind, and the varying state and condition of human society.

The improvements in our law, were, during this reign, of the most extensive and salutary character, for which the people were chiefly indebted to the pecuniary necessities of the king, since they were always granted at the request of parliament: but purchased with the vote of a valuable aid<sup>1</sup>.

Administration of justice between party and party.

Mr. Justice Blackstone thus sums up the juridical provisions of this period. "Upon the whole we may observe, that the very scheme and model of the administration of common justice between party and party, was entirely settled by Edward I.: and has continued nearly the same in all succeeding ages, to this day, abating some few alterations, which the humour or necessity of subsequent times hath occasioned.

Forms of writs.

"The forms of writs, by which actions are commenced, were perfected in his reign, and established as models for posterity. The pleadings, consequent upon the writs, were then short, nervous, and perspicuous; not intricate, verbose, and formal.

Legal treatises.

"The legal treatises, written in his time, as Britton, Fleta, Hengham, and the rest, are, for the most part, law at this day; or at least *were* so, till the alteration of tenures took place. And, to conclude, it is from this period, from the exact *observation* of Magna Charta, rather than from its *making* and *renewal*, in the days of his grandfather and father, that the liberty of Englishmen began again to rear its head: though the weight of the military tenures hung heavy upon it for many ages after<sup>2</sup>."

<sup>1</sup> 2 Lingard, 473.

<sup>2</sup> 4 Black. Com. 427. Hale's Hist. Com. Law, 162; Inst. 156. Sed vide etiam, Dunst. 584, 573—577. Wikes, 107, 118, 119, 122. Ryley, 280. 2 Rymer, 664, 960, 1004. Walsing. 48. 2 Lingard, 473, et seq. 2 Hume, 235—239, 245, 319—321. 8 Henry, 113—121.

From this time to that of Henry VII., the civil wars and disputed titles to the crown gave little leisure for further judicial improvement; “*nunc silent leges inter arma.*” And yet is it to these very disputes that we owe the happy loss of all the dominions of the crown on the continent of France; which turned the minds of our subsequent princes entirely to domestic concerns.

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Similar causes may have originated the method of barring entails by the fiction of *common recoveries*; invented originally by the clergy, to evade the statutes of mortmain, but introduced under Edward IV., for the purpose of unfettering estates, and making them more liable to forfeiture; while, on the other hand, the owners endeavoured to protect them by the universal establishment of uses, another of the clerical inventions\*.

Fiction of common recoveries.

No Statute Roll prior to the reign of Edward I. has been preserved, if any such was ever made; and although the Statute Rolls of Edward are not perfect, yet many of them remain, and are undoubted evidence of the laws enacted, and, in some instances, may be deemed evidence of the authority by which they were enacted.

No Statute Rolls prior to the reign of Edward I.

## 2. *Legislative Assemblies.*

In this reign, the constitution of the legislative assemblies of England essentially acquired their present form; but such formation was the result of circumstances, rather than of any legislative act, or of any clear and settled principles of government.

Legislative institutions acquired their present form.

During the reigns from the Conquest, preceding that of Edward I., the only record of writs of summons to parliament of individuals, and for the election of knights, citizens, and burgesses, as representatives of the commons in parliament, together with the representatives of the Cinque Ports, is the imperfect record of 49 Henry III.

Writs of summons to parliament.

The dignitaries of the Roman Catholic Church, under the cloak of sanctity, had ever bent their undivided attention to the acquisition of riches, and political power, and had been restrained by no sense of justice or honour in the pursuit of such objects: but a disposition had been engendered to resist these usurpations, in the reign of John, was nourished in the reign of his son, manifested itself more fully in this reign; and

Usurpations of the Roman Catholic church.

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1272—1307.

Edward, for his own protection, endeavoured, with the assistance of the free and independent spirit of his people, partially to throw off the manacles of the papal power, and his want of the assistance of his people, together with his necessities for money, led to an amelioration of the political constitution of the government, both in its form and administration.

Increased influence of the boroughs.

It had been the salutary policy of John, and Henry III., to encourage and protect the lower and more industrious orders of the state; whom they found well disposed to obey the laws and civil magistrate, and whose ingenuity and labour furnished such commodities as were requisite, for the ornament of peace and support of war.

Numerous boroughs were erected by royal patent,—liberty of trade was conferred upon them,—the inhabitants were allowed to farm, at a fixed rent, their own tolls and customs<sup>1</sup>: they were permitted to elect their own magistrates; justice was administered to them, by their magistrates, without obliging them to attend the sheriff's tourn; and a shadow of independence, by means of these equitable privileges, was gradually acquired by the people<sup>2</sup>.

Power of the king to levy tallages.

The king, however, retained the power of levying tallages, or taxes, upon them at pleasure<sup>3</sup>, and though their poverty, and the customs of the age, had, for some period after the Conquest, made these demands neither frequent nor exorbitant, such unlimited authority in the crown, was a sensible check upon commerce, and was utterly incompatible with the principles of a free government:—particularly as the cities and boroughs had so increased in wealth, as to have been enabled, on several occasions, to replenish the exhausted treasury of the crown,—when the earls and barons had refused assistance,—and the king also found he had not, at this period, sufficient power to enforce his numerous edicts for supply, and that it was necessary, before he imposed taxes, to smooth the way for his demand, and to obtain the previous consent of the boroughs, by solicitations, remonstrances, and authority<sup>4</sup>.

All classes perceived the necessity of restricting the authority of the crown.

Although the Provisions of Oxford had been annulled by the Edict of Kenilworth, the memory of them remained, and, probably, had a tendency to raise, in the minds of all classes, opinions of their rights, and of the necessity of control on the

<sup>1</sup> Mad. Fir. Bur. 21.

<sup>2</sup> Brady on Boroughs, App. No. 1, 2, 3. 2 Hume, 273.

<sup>3</sup> Mad. Hist. Exch. 518.

<sup>4</sup> 2 Hume, 274.

royal power, to prevent those excesses which had provoked the past disturbances.

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1272—1307.

Under such circumstances, it became imperative that a more stable government should be provided, than that which had prevailed during a great part of the reign of Henry III., and the best illustration of its rise and progress will be, by reference to the principal statutes and writs, in their chronological succession.

When, by the death of his father, Edward succeeded to the throne, he was absent in the Holy Land, and writs were issued to the several sheriffs, commanding the king's peace to be proclaimed.

One of the first acts of the government during the absence of Edward, was, in the king's name, to impose a tallage on the town of Bristol, part of the king's demesne, and to inhibit the exportation of wool, generally, to any parts beyond sea, to Scotland, Ireland, Wales, or elsewhere out of the kingdom, until the king should order to the contrary, under pain of forfeiture of goods and chattels, and also "sub periculo vite et membrorum<sup>5</sup>."

Levy of a tallage.

Exportation of  
wool prohibited.

These writs are important towards establishing the nature of the royal prerogative; and if the power of the crown to tallage and legislate had not been recognised, it is not probable it would have been assumed, and unobjected to, during the king's absence, when it was the interest of the royal party to conciliate all classes.

Power of  
legislation.

Edward arrived in England in the second, and held a parliament in the third, year of his reign<sup>6</sup>; but the nature of the constitution and proceedings of this parliament, can be best derived from the statutes made by it, and from the writ for levying a fifteenth granted to the king.

The title to the statutes "Of Westminster the First," is, "Ces sont les establissementz le Rey," and are stated to have been made "par son conseil," and by the assent of the prelates, earls, barons, "et la comunaulte de la tere ilcoes somons:" which expressions show that the king's council, who, with the king, are stated as having made the statutes, were, as a body, distinct from the prelates, earls, barons, and "comunaulte" who assented to the statutes, though many of the members of that "council," may also have fallen under the description applied to the persons so assenting<sup>7</sup>.

Statute "Of  
Westminster the  
First."

<sup>5</sup> *Fœdera*, N. E. tom. i. 510.

<sup>6</sup> *Ibid.* i. 514.

<sup>7</sup> *Ibid.* i. 535, 536, 558.



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1272—1307.

Writ for levying  
the fifteenth.

In the writ directed to the commissioners for levying the fifteenth, the grant is thus stated: "*Cum prælati, comites, barones et alij de regno nostro, quintam-decimam de omnibus bonis mobilibus ad relevationem status nostri nobis concesserunt gratiose*:"—thus importing that besides the prelates, &c., "*alij de regno*" concurred in the grant, which may possibly have meant the tenants in chief, not included in the description of "*majores barones*," in the Charter of John, but could not be interpreted, that all others of the kingdom had been present<sup>a</sup>.

Statute "Offi-  
cium Corona-  
toris."

The statutes or ordinances attributed to 4 Edward I. are first what is intituled "*Officium Coronatoris*," which seems to be principally a statement of the duties of the office of coroner, and of what should be done in case of wreck, bearing rather the resemblance of an authoritative exposition of law, than the enactment of a statute.

There is no evidence from what authority emanated the other two statutes of the same year, but they bear the style of the acts of the king in his ordinary council.

Statute "De  
Bigamis."

The first, called the statute "*De Bigamis*," begins with stating, that in the presence of the bishops of Rochester, and Bath and Wells, &c., the constitutions underwritten and recorded, were recited, and afterwards, before the king and his council, heard and published; and all of the council, as well justices as others, agreed that they should be put in writing, for a perpetual memory, and steadfastly observed: and the conclusion seems to have been "*predictæ constitutiones editæ fuerunt in parlamento*," which imports an enactment by a legislative power; but it is doubtful whether the articles in many parts are not rather declarations of what the law was, than enactments of new law.

Statute concern-  
ing justices being  
assigned.

The other statute concerning justices being assigned, begins "*Accorde est p<sup>r</sup> nro seigneur le roy, et par soun conseil qe justices aillent pur i terre a enquerer e vier*," &c. In other parts, the words are, the "*king wills*," without mention even of the council; and in one place, "*the king wills and enjoins the justices*," &c., so that trespassers may not remain unpunished until the parliament.

This ordinance is, in many parts, apparently a legislative act; and though it refers to proceedings in parliament, the reference seems to be to the parliament sitting as a court of justice.

<sup>a</sup> Rot. Parl. Edward I. App. 224.

The "Statutes of Gloucester," of 6 Edward I. are important statutes, affecting the modern law of England, and the authority by which they were made is thus stated: "Purveaunt mesme le rei pur le amendement de sun reume," &c., "*appelez les plus descrez* de sun regne, ausi bein des greindres come des meindres, establi est e concordaument ordeine, &c."

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"Statutes of  
Gloucester."

These words import a selection by the king, and are not intended to express the persons by whose authority the statutes were made, but persons whose assistance was called for, in advising and framing the statutes, as the judges and others, and did not import knights, citizens, or burgesses, as representatives,—in fact the statutes of 13 Edward I., referring to the Statutes of Gloucester, state them, in effect, to have been made by the king, with prelates, earls, barons, and his council, assembled for that purpose at Gloucester. The authority by which the Statutes of Gloucester were made, correspond with the words used in the Latin language, to express the authority by which the Statutes of Marleberge were made".

The statute "De Viris Religiosis," of 7 Edward I., appears on the statute-roll at the Tower, in the form of a writ, addressed by the king to his justices of the bench. It recites a mischief arising from monasteries obtaining lands by purchase or gift in mortmain, and the provision for remedy of this grievance is thus stated: "Nos de concilio prelatorum comitum et aliorum fidelium regni nostri de concilio nostro existentium, providimus statuimus et ordinavimus, &c."

Statute "De  
Viris Religiosis."

This writ, therefore, states a legislative act by the king, by the advice of such prelates, earls, and others, as were of his council; and that legislative act must be considered as an act of legislation, which it was then conceived the king, by advice of his council assembled in parliament, might make, but so described in the writ, as scarcely to admit of an interpretation which would include knights, citizens, and burgesses, elected, as was required by the writs of 49 Henry III.

Legislative acts,  
without the con-  
currence of  
"knights," or  
"burgesses."

Edward, in the eleventh year of his reign, when engaged in the conquest of Wales, convened distinct assemblies at York and Northampton, of knights, citizens, burgesses, and representatives of towns, for the parts north and south of Trent, to which no earls or barons were summoned thus establishing that there was then no constitutional law considered as binding

Convocation of  
assemblies at  
York and North-  
ampton, 11  
Edward I.

No constitutional  
law, for obtain-  
ing aids.

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the crown to any precise mode of obtaining aids from its subjects.

Four knights for each county, and two burgesses from each borough, summoned for taxation.

The writs commanded the sheriffs of the different counties to cause to come before the king, or his commissioners, at Northampton, all those of the bailiwick of the sheriff, able and fit for arms, who had more than 20*l.* of land, and who were not then with the king, in Wales; and *four* knights of the county, for the community of the same county, having full power; and of every city, borough, and market-town, *two* men, having like power for the communities of the same, to hear and do those things which to them on the king's part should be shown: and that none having beyond 20*l.* per annum of land, and able to bear arms, should be exempted; and that no person who had not 20*l.* per annum should come to the king<sup>10</sup>.

Precepts of a similar nature, to attend at Northampton and York, were sent to the archbishops of Canterbury and York, respectively, and to others of the clergy<sup>11</sup>.

The co-existence of two legislative assemblies.

These writs issued apparently under extraordinary circumstances; no comparison of such writs, with the writs issued in 49 Henry III., and with those issued in 23 Edward I., can be made. Under these writs, two assemblies for legislative purposes existed in different parts of the kingdom, and which was never previously, nor has it been subsequently, attempted.

Parliament at Shrewsbury.

Summons of peers.

Edward having conquered Wales, and the prince Llewellyn having been killed, and David, his brother, the only remaining male of that family, having been taken prisoner, Edward, in the eleventh year of his reign, issued writs, convening a parliament at Shrewsbury, to procure a sanction to the severe measures which he intended to pursue against David, the heir to the principality of Wales, which country he had determined to annex to England. Writs of summons were directed to the Earl of Gloucester, the Earl of Lancaster, the king's brother, and nine other earls, and to ninety-nine others whose names are entered upon the roll, none of whom were distinguished as barons,

<sup>10</sup> Brady, tom. iii. App. No. 7. Rot. Wall. 11 Edward I. in dors. m. 4.

<sup>11</sup> Federa, N. E. tom. i. 625, et vide etiam ibid. 630, 631. Hody, 372, 378, 380, 382. 2 Lingard, 452, who states, "that the clergy and commons of the bishopric of Durham met in that city for the same purpose, before commissioners appointed by the king."

except Nicholas, Baron de Stafford<sup>12</sup>; and then follows on the roll, a writ to the mayor and citizens of London, concluding with a command: "*Quod duos de sapientioribus et aptioribus civibus predictæ civitatis eligi faciatis, et eos ad nos mittatis, ita quod sint ad nos apud Salopiam in crastino Sancti Michaelis proximo futuro, nobiscum super hoc et aliis locuturi;*" and the same command was issued to twenty cities or boroughs, all of which held immediately of the crown, except Chester, the earldom of which the king had then in his own hands.

Writs were sent, "*Universis et singulis vicecomitibus per Angliam,*" that in each county they should choose two knights from the community of the same county, to come to the king<sup>13</sup>. And seventeen judicial and ministerial officers were also summoned.

Many cities and boroughs, which were afterwards required to send representatives in 23 Edward I., were not required to send representatives to this assembly, and the writs for the election of citizens and burgesses, were directed to the municipal officers of each city and borough, and not to the sheriff of each county, as afterwards practised in 23 Edward I.:—and the persons chosen, were merely called "to confer with the king, on the business of David, and other business."

The assembly thus convened acted legislatively, although it does not appear that any prelates were summoned or attended.

The statute of 11 Edward I., called the statute "*de Mercatoribus,*" or "*Acton Burnel,*" is to be considered as "authorised" by it; and this statute forms part of the law of the land.

The language of the law itself is, "*Le rei, par lui e par sun conseil ad ordine, &c.,*" without mentioning the assent of others. It follows from the constitution of this convention, as well as from the constitution of the two conventions at Northampton and York, in the preceding year, that the constitution of a legislative assembly in parliament, and the mode of its formation, were not, in 11 Edward I., settled by law<sup>14</sup>.

Among the statutes of 12 Edward I., are the "*Statutes of Wales,*" by which the government of that country was regulated, after its union to the crown of England, by Edward; and it is stated that the king assumed absolute powers of legislation over the territory described as his land of Snowdon, and other

**EDWARD I.  
1272—1307.**

Summons of  
citizens and  
burgesses.

Summons of  
knights.

Cities and boroughs required to send representatives, in 23 Edward I., who were not required to do so in 11 Edward I.

Non-attendance  
of the clergy.

Statute "*De Mercatoribus,*" or "*Acton Burnel.*"

"*Statutes of Wales.*"

<sup>12</sup> *Fœdera, N. E.* tom. i. 630. *Rot. Wal.* in dors. m. 4, 3, 2.

<sup>13</sup> *Ibid.* 631.

<sup>14</sup> See vide 2 Lingard, 452, 453.

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of his lands in Wales, though part was by these statutes put under the jurisdiction of the justice of Chester <sup>15</sup>.

There is no positive proof that these statutes were the act of a legislative assembly, and the provisions made in the Exchequer in the same year, and entered in the Close Roll, seem also to have been only sanctioned by the king.

Statute "De  
donis Condition-  
alibus."

The statutes of 13 Edward I. are the foundation of much of the law of the land as it now stands. The first of these statutes being the celebrated act, "De donis Conditionalibus," which created entails in lieu of fees conditional; and the construction put upon this statute by the courts was such, as to carry the intention of its framers into the fullest effect. For the judges not only cut a fee tail out of a fee simple, but they again divided a fee tail, creating a reversion expectant <sup>16</sup>.

Knights and  
burgesses were  
not convened to  
Gloucester in 6  
Edward I.

These statutes have this title, "Statuta Regis Edwardi edita apud Westm'. in Parlamento suo Pasch. anno regni sui tertio decimo;" and then begin, "Cum nuper Dominus Rex in quindena sancti Johannis Baptiste anno regni sui sexto convocatis prelatibus, comitibus, baronibus, et consilio suo apud Glouc.;" thus showing that knights, citizens, and burgesses, formed no part of the legislative assembly which was convened at Gloucester in 6 Edward I.

"Statute of Win-  
chester."

The "Statute of Winchester" applies principally to the administration of justice, and preservation of the public peace, imposes severe penalties for its infraction, and makes the hundred, where a robbery should be committed, responsible; but it speaks only in the king's name, and all its provisions seem to have emanated from the crown.

"Statute of Mer-  
chants."

The "Statute of Merchants," though speaking only in the king's name, appears to have been made in the parliament at Westminster of the same year in which the statute "De donis Conditionalibus" was passed, though not placed on the roll with that statute.

There is an entry in the Close Rolls 15 Edward I., which shows that prelates, earls, barons, and others, were present in the parliament, when the immediate foregoing statutes were promulgated; though whether the persons described, "men of religion, and other ecclesiastical persons, and

<sup>15</sup> 1 Rep. Dig. Peer. 191, 192.

<sup>16</sup> 2 Inst. 335. Rylëy, 280. 2 Lingard, 474.

other persons, secular or lay;" were members of a legislative assembly then convened, does not appear, but it seems they were not members of such an assembly.

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1272—1307.

Great discontent prevailed in the kingdom during the king's absence in France, with a general spirit of insubordination amongst the great men, which the king seems to have foreseen<sup>17</sup>; and he returned to England in 1289.

Discontent in the country.

Although there have not been found on record any trace of special writs of summons to the parliament that was holden in 18 Edward I., directed to prelates, earls, &c.; yet an entry of a writ appears in the Close Roll<sup>18</sup> of that year, directed to the sheriff of Northumberland, similar writs being issued to all other sheriffs, which commands that "*duo vel tres de discretioribus et ad laborandum potentioribus militibus et comitatu predicto sine dilatione eligi, et eos ad nos usque Westm. venire facias*,"—"cum plena potestate pro se et tota communitate comitatus predicti ad consulendum et consentiendum pro se et communitate illa hiis que comites, barones, et proceres regni nostri tunc duxerint concordand."

Two or three knights to be elected in each county.

Whether the powers of this body, when so assembled, were absolute, or only for mere advice,—which the crown could either accept or reject,—it is clear that the election of knights, citizens, and burgesses, and barons of the Cinque Ports, for the purposes of representation, according to the form of the writs issued in 49 Henry III., was not in 18 Edward I. deemed essential to the constitution of a legislative assembly in parliament: and the discretionary power of sending either *two or three* knights for each county, seems to demonstrate that the writs of 49 Henry III., requiring the election of knights only, were not considered in 18 Edward I. as regulated by express law, fixing the number to be chosen for each county; and if any question was to be decided by a plurality of voices, the election of three knights by some counties, and two by others, might make an important difference.

Uncertainty of the component parts of the legislature in 18 Edward I.

But every record and tradition up to this period prove that, the constitution of the legislative body in parliament was not settled by positive law, binding the discretion of the crown in the convocation of parliament, as that discretion is now prescribed by principles derived from usage and statute.

<sup>17</sup> *Fœdera*, N. E. tom. i. 685.

<sup>18</sup> *Claus.* 18 Edwd. I. in dors. m. 9.

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“ Statute of  
Westminster  
III.”

The policy of Edward seems to have been particularly aimed at lessening the power of the barons, and one measure of his reign, the statute “*Quia emptores terrarum*,” or “Statute of Westminster the Third,” was directly calculated for this purpose; and to the policy of that statute the king steadfastly adhered. It was promulgated in 18 Edward I., but which merely expresses that it was made by the king in his parliament, “*ad instantiam magnatum regni sui*,” though a law affecting all the freehold property of the kingdom, whether holden of the king or others, and is the first great statute of alienation. By this act every freeholder was at liberty to alienate all his land, provided he made a reservation of the services, not to himself, but to the chief lord: and since this statute, as no new reservation of services could be made, no new manor could be created<sup>19</sup>.

Statute “*Quo  
Warranto*.”

The next statute, “*De Quo Warranto*,” purports to be a royal grant of grace and favour; but as it tended to diminish the rights of the crown, and not otherwise affecting the rights of the subject, it might, under any circumstances, have emanated from the king’s pleasure.

“*Statutum de  
Consultatione*.”

And the act intituled, “*Statutum de Consultatione*,” which is founded on a grievance complained of by the king’s subjects, with respect to writs of prohibition to the spiritual courts, providing a remedy by the writ of consultation, is expressed to have been made by the king alone.

A. D. 1290—1295.

From 18 Edward I., and before the clear adoption of the representative system in 23 Edward I., few important facts have been recorded in the statutes, or the rolls, or the pleas in parliament, of that period; there are, however, two writs which require observation.

Knights required  
to be furnished  
with full powers  
from their res-  
pective counties.

These documents are on the Close Roll<sup>20</sup>, and directed to the sheriff of Northumberland;—the first writ is tested October 8, 22 Edward I., and commences by stating the king’s will to have a conference, “*cum comitibus baronibus et ceteris magnatibus de regno*,” upon certain important business touching the king and kingdom, on the morrow of St. Martin then next; and ordering the sheriff to cause two knights to be chosen of the county, and to come to Westminster at the time assigned, with full power for themselves, and the whole community of the county, to consult and consent for themselves, and for the

<sup>19</sup> 1 Rot Parl. 41. 2 Lingard, 475, 476.

<sup>20</sup> In dors. m. 6.

whole community of the county: and it is stated on the Roll, similar writs were directed to all the sheriffs in England.

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The other writ appears to have been issued on the 9th of October, directed to the sheriff of Northumberland, partly reciting the writ of the 8th of October, and directing that, besides the *two knights* required to be elected by the former writ, the sheriff should cause *two other* knights to be chosen, and sent with the two knights first directed to be chosen, to Westminster, on the beforementioned morrow of St. Martin, “ad audiendum et faciendum quod eis tunc ibidem plenius injungemus:” this writ is noted on the Roll by the words “De aliis militibus cum prioribus mittendis,” and it is likewise stated that similar writs were issued to all the sheriffs of England.

Knights only summoned to do and hear what the king should command.

It will be observable that, under the first writ, the knights are required to be furnished with full power from the communities of their respective counties, to consult and consent for themselves and the communities; but, in the second writ, they are summoned only to hear and do what the king should then more fully command: the prelates are not mentioned in either of the writs, neither were any writs forwarded to cities and boroughs.

Object of the writs 22 Edward I.

The object of this meeting was to obtain an aid, and a tenth of their moveables was granted; the grant, and the appointment of taxers and collectors to assess and levy the amount, are on the Rolls<sup>21</sup>.

Edward, in the 23rd and subsequent years of his reign, was distressed for pecuniary resources; and besides the taxes which he had levied in pursuance, or under pretence, of grants by his people, he raised large sums of money by very arbitrary measures: the discontent produced by these proceedings, the hostility of the King of France<sup>22</sup>, the state of Scotland, and the general embarrassment of the king's affairs, as testified by expressions in his writs to the prelates, “importing the necessity of consulting all in a common danger, and of receiving assistance from all,” were productive of the measures which ensued.

Pecuniary necessities of the crown.

The king had experienced in his father's lifetime the effects of the influence of the great men assembled at Oxford; he had himself recently, when in France, experienced the resistance made by the Earl of Gloucester and his adherents to the

Influence of the great men.

<sup>21</sup> 35 Edin. Rev., Art 1, p. 38.

<sup>22</sup> Frodera, N. E. tom. i. 850, 374.



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demand of an aid; and he found the knights of the shires, convened in the eighteenth year of his reign, not disposed to do all that he desired.

Edward has recourse to the people for support.

Under such circumstances he looked to a larger portion of the people for support; his father having also found himself compelled to appeal to the people, when oppressed by a powerful confederacy of the barons.

These considerations induced him to imitate the policy of the Earl of Leicester in 49 Henry III., and to endeavour the formation of an assembly, so composed, as to afford a balance to the power of the barons, and procure him a general aid from his people, which could alone be attained by summoning to a legislative assembly representatives for all the shires, cities, and boroughs.

Writs of June 24, 23 Edward I. summoning the clergy and peers to parliament.

It appears from the Close Roll <sup>23</sup> of 23 Edward I., that, on the 24th of June of that year, writs were issued to the archbishops and bishops, forty-two abbots, eleven priors, the masters of the orders of Sempringham, the Temple, and St. John of Jerusalem, also to eleven earls and fifty-three barons, summoning them to parliament, at Westminster, on the 1st of August.

Summons of the judges.

Writs to the same effect were issued to Gilbert de Thornton, the justices of both benches, the barons of the exchequer, and other persons styled of the council, and to the clerks of the council.

No writs for election of knights or burgesses.

But there are no corresponding writs for election of knights, citizens, and burgesses; neither does it appear that those to whom writs were directed, met in pursuance of such writs.

Summons of the inferior clergy.

Another writ <sup>24</sup>, tested at Wingham September 30, 23 Edward I., appears on the Close Roll, directed to the Archbishop of Canterbury, by which representatives of the inferior clergy, were required to attend at Westminster, upon the Sunday after the Feast of St. Martin, to treat, ordain, and act with the king, "*et cum cæteris prælati et proceribus, et aliis incolis regni nostri.*"

Summons of the prelates.

And writs were issued to the Archbishop of York, and the bishops, except that some variations were introduced in the præmunientes clause, adapted to the states of the particular churches.

And writs, without the præmunientes clause, were issued

to sixty-seven abbots, and the masters of the three orders; but no writs to priors appear on the Roll<sup>25</sup>.

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This attempt to procure the convention of the whole body of the clergy may be thus accounted for. The clergy, though claiming an exemption from taxation by laymen of that part of their property, which was considered as more peculiarly belonging to their respective churches,—property which they held in free alms, and which was commonly called their spiritualities,—had, notwithstanding, been accustomed to contribute out of this property, as well as out of their other property, to the necessities of the state, but always by a distinct grant, in which the laity did not join; and this was frequently done in consequence of the interference of the pope in favour of the prince on the throne: and the bull of Pope Boniface expressly required the sanction of the apostolical see to any grant by the clergy, and forbade all imposition on the clergy by laymen.

Clergy did not recognise the right of the laity to tax their spiritualities.

The prelates, when assembled in parliament, did not ordinarily assume to themselves any power to charge the spiritual property in the hands of the rest of the clergy; and though the prelates granted a specific charge for themselves, it was left to the option of the rest of the clergy, to contribute in such proportions as they might respectively think fit. The contribution must then have depended on the disposition of the individuals, and probably was very unequal. This would naturally lead to the convention of the whole body of the clergy, who might make one general grant for that body, charging all in proportion to their respective privileged possessions. But to assemble all personally was impossible; to assemble all by representation was practicable<sup>26</sup>.

Clergy in parliament did not ordinarily charge spiritual property, out of their immediate possession.

Writs, upon the 1st of October, were issued to the Earl of Pembroke and seven other earls, and forty-one barons, requiring their attendance, “*ad tractandum ordinandum et faciendum nobiscum et cum prelatibus et ceteris proceribus et aliis incolis regni nostri, qualiter sit hujusmodi periculis obviandum*”<sup>27</sup>.

Writs of October, 23 Edward I. summoning peers to parliament.

On the 3rd of October, writs<sup>28</sup> were issued to the sheriffs of all the counties except Chester and Durham, reciting “*quia cum comitibus baronibus et ceteris proceribus regni nostri*

Summons of knights, citizens, and burgesses.

<sup>25</sup> Claus. 23 Edward I. in dors. m. 3.

<sup>26</sup> Arch. Wake's State of the Church 235. Gilbert's Hist. Exch. 46, 51, 54

<sup>27</sup> Claus. 23 Edward I. in dors. m. 3.

<sup>28</sup> Ibid. in dors. m. 1.

EDWARD I.  
1272—1307.

Election of  
citizens and  
burgesses.

super remediis contra pericula que eidem regno hiis diebus imminent providendis colloquium habere volumus et tractatum, per quod eis mandavimus, &c.;" and the writs then proceed to command each sheriff that he should cause to be elected of his county two knights, and of each city of the same county two citizens, and of every borough two burgesses, without delay, and cause them to come to the king on the day and at the place appointed for the meeting of earls and barons; so that the said knights should then have full and sufficient power for themselves and the community of their respective counties, and the citizens and burgesses for themselves and the community of their respective cities and boroughs from them respectively, "[divisim ab ipsis], *ad faciendum quod de communi consilio ordinabitur* in premissis, ita quod pro defectu hujusmodi potestatis negotium predictum infectum non remaneat quoquo modo;" and the sheriffs were respectively commanded to have there the names of the several knights, citizens, and burgesses, with their respective writs.

Assemblage of  
the lords, spiritual  
and temporal, and  
commons, in parliament.

Under these writs the laity were assembled by a species of representation, consisting of the lords spiritual and temporal, and the representatives of shires, cities, and boroughs, assuming a power to tax those whom they might be considered as representatives; the spiritual lords representing in this assembly their lay fees, the temporal lords their fees, and the knights, citizens, and burgesses, their respective shires, cities, and boroughs; but the Cinque Ports were not represented until the reign of Edward II., except in 49 Henry III., which may be thus accounted for, that their services as ports, gave them an exemption from charges or aids.

The clergy granted the king a tenth of their ecclesiastical revenues for defence of the kingdom; and it seems<sup>29</sup>, the "comites, barones, milites, et alii de regno," granted the king an eleventh of all their moveables; and the "cives, burgenses, et alii probi homines de dominicis nostris civitatibus et burgis ejusdem regni," a seventh of all their moveables.

Statute "De prisonibus prisonam frangentibus."

The only statute of 23 Edward I., is one intituled "De prisonibus prisonam frangentibus," and seems, from this "Placita in Parlamento," to have been made at an earlier parliament, and to which the writs on record do not apply.

The king appears at this time to have been extremely

embarrassed from his endeavours to resist the injustice of the King of France<sup>27</sup>, and to impose his own dominion on Scotland<sup>28</sup>, by which his expenses had exhausted his finances, and it became imperative upon him to obtain money, *per fas aut nefas*; and the unprecedented expressions in his writs to the prelates, importing the necessity of consulting all in a common danger, and of receiving assistance from all, seem to have been extorted by the difficulties with which he was surrounded.

A bull having been issued from Rome, which forbade the clergy to pay or grant any tax or imposition, on the revenues of their churches or goods, to laymen, under the name of aid, assistance, boon, gift, or otherwise, without the authority of the holy see<sup>29</sup>; the clergy refused to grant an aid, and the king forthwith put them out of the protection of the laws<sup>30</sup>.

EDWARD I.  
1272—1307.

Clergy prohibited  
from paying lay  
taxes.

Edward, in the twenty-fifth year of his reign, attempted to compel all persons, who held 20<sup>l</sup>. a year of land in the kingdom, whether holding of the king in chief or of others, to go with him into Flanders, which occasioned great disturbance<sup>31</sup>. This attempt was contrary to all the previous charters, and apparently had in view the destruction of mesne tenures, which was a favourite object of Edward's policy, but particularly obnoxious to the barons, and oppressive to the sub-tenants, unless all were made immediate tenants of the crown, and thus freed from their obligations to their respective lords<sup>32</sup>.

Oppressive con-  
duct of the king.

The people were generally alarmed by the violence of the king's proceedings towards the clergy, seizing upon their lay-fees, and exacting aids and other duties, without the consent of an assembly regularly constituted for the purpose<sup>33</sup>.

Arbitrary exac-  
tion of taxes.

<sup>27</sup> Federa, N. E. tom. i. 850, &c. Walsing. 68. 2 Rymer, 634, 635. 1 Heming. 57. West. 423. 2 Lingard, 423, 424.

<sup>28</sup> 2 Rymer, 709, 840, 847. Heming. 93—100. Walsing. 67—484. 2 Lingard, 424—438.

<sup>29</sup> 2 Rymer, 706. 1 Heming. 104, 107. Trivet, 296. 2 Chron. Dunst. 652.

<sup>30</sup> Walsing. 69. 1 Heming. 107, 108, 109. M. West. 429. 2 Chron. Dunst. 653, 654. Thorn. 1965. Knyghton, 2491. 2 Hume, 286, 287. 2 Lingard, 458.

<sup>31</sup> Federa, N. E. tom. i. 864, 865.

<sup>32</sup> Walsing. 69. 2 Hume, 289.

<sup>33</sup> Rot. Parl. Edward I. Appen. 289. 1 Heming. 112, 113. 2 Rymer, 783. Walsing. 70. 8 Henry, 123, 124.

EDWARD I.  
1272—1307.

Confirmation of  
the great char-  
ters.

Grant of an aid.

No positive form  
of granting aids.

Charter of 25  
Edward I., con-  
firming charters  
of Henry III.  
with other liber-  
ties.

They considered these proceedings as violations of the rights and liberties of the subject, and frequently pressed him to confirm the Great Charter and Charter of the Forest granted by his father, which had been in these and other instances violated<sup>34</sup>. To this he at length acceded in consideration of an aid, which, however, does not appear to have been granted by any competent authority; for the knights of shires were not summoned, to deliberate about anything, but only to receive the king's charters and letters patent, and do what the prince, the king's lieutenant, and his council should ordain; and there is no trace of representatives of cities and boroughs having been summoned for the same purpose<sup>35</sup>.

The entire proceedings with respect to these aids, and the confirmation of the charters, seem little to accord with a clear, settled, and established form of granting aids by a legislative assembly, constituted according to clear, settled, and established law; and were terminated rather by a compromise between the king and the people, both parties dreading the consequences of further contest, than by a legal constitutional act<sup>36</sup>.

The charter of November 5, 25 Edward I., which issued after a considerable struggle with the people, is very important. It confirms the Great Charter of Liberties and the Charter of the Forest of 9 Henry III., and then declares that, the "aides, mises, ou prises," which the people had before made to the king, for his wars and other occasions, by grant of their free will, should not be drawn into a custom; that the king granted to the archbishops, bishops, abbots, priors, and others of the holy church, and to the earls and barons and all the commonalty of the realm, that he could take for no occasion such manner of aids, impositions, or prises from the kingdom, except by the assent of the whole kingdom, and for the common profit of the same kingdom, except the ancient aids and prises due and accustomed; and that, as the commonalty of the kingdom were grieved by the malevolt of wool, the king granted that neither that, nor any other, should be

<sup>34</sup> Walsing. 72, 73. 1 Heming. 115, 117. Trivet, 302, 304, 308.

<sup>35</sup> Federa, N. E. tom. i. 378. 2 Prynne, 35.

<sup>36</sup> 9 Henry, 107, 108, 109. T. Wykes, 112.

imposed or taken, without the common assent and free will<sup>37</sup>.

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The statute called “*de Tallag̃*,” or “*de Tallagio non concedendo*,” supposed to have been enacted in 25 Edward I., contains a declaration, that no tallage or aid shall be levied by the king or his heirs in his kingdom, without the will and assent of the archbishops, bishops, earls, barons, knights, burgesses, “*et aliorum liberorum hominum*,” of the kingdom<sup>38</sup>.

Statute “*de Tallagio non concedendo*.”

The laws thus made in 25 Edward I. by the king’s charters, and by the immediate preceding statute, are, for the first time, clear, distinct, and conclusive as to these points,—that no tax could be imposed by the king alone on his subjects,—that the consent of the subject must be expressed, to authorize the collection of a tax according to the charter,—and that, according to the statute, such consent could only be expressed by the archbishops, bishops, abbots, priors, earls, barons, knights, burgesses, and “*liberi homines*” of the kingdom.

Legal mode of taxation.

To obtain the individual assent of all was impracticable. As far as individual consent could be obtained, that is, of the archbishops, bishops, abbots, and priors amongst the clergy, and of the earls and barons amongst the laity, writs of summons requiring their personal attendance, appear by subsequent usage to have been deemed necessary. For the rest of the clergy and laity, consent by representation, was substituted in practice for individual consent. For the body of the clergy, the archdeacons, deans, and one of each chapter were summoned; and the beneficed clergy of the several dioceses elected representatives, and those, bound the whole body of the clergy as to their spiritualities.

For the body of the laity in those counties in which taxes were usually imposed, the responsible freemen of such counties respectively elected representatives for the whole; and their election bound the whole body.

For the body of each of certain cities, and each of certain boroughs, representatives were elected by the citizens and burgesses respectively; *i. e.* by all the free, permanent, and

<sup>37</sup> 1 Stat. Realm, 114—124. 1 Heming, 167, 168, 170, 171. Walsing. 69. M. West. 431, 433. Knyghton, 250. 2 Hume, 291—295. 2 Lingard, 460.

<sup>38</sup> Heming, 141. West. 431. Walsing. 73, 74. Knyghton, 2522—2524. 2 Lingard, 464—467. 1 Stat. Realm, 125.

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responsible "inhabitant householders," duly admitted, sworn, and enrolled at the court leet.

The rest of the inhabitants of the kingdom, though liable, except Chester, Durham, Wales, and the cinque ports, to be taxed by the vote of an assembly convened under the law as thus declared, had no voice in the election of representatives, that were to be sent to such assembly.

Consent of commons only required for imposition of taxes.

Statute "De Finibus Levatis"  
27 Edward I.

It seems that in 27 Edward I., when the king was evidently compelled to conciliate the people, it was not thought necessary to the validity of a law, imposing no direct charge on the subject, that representatives of counties, cities, and boroughs should be members of the assembly, in which such law should be made; thus the statute, "De Finibus Levatis," after confirming the Great Charter, enacts certain provisions, respecting fines levied in the king's court, and charges on sheriffs, and ordains, that justices of assize shall be also justices of gaol delivery, and makes other legislative provisions, the whole of which, as far as the language of the law affords any just inference, proceeded from the king alone, without any mention of other authority; and the same observation will apply to the statute intitled, "Statutum de Appellatis," passed in 28 Edward I., and other legislative acts of this reign.

"Statutum de Appellatis."

Statute "De Falsa Moneta,"  
29 Edward I.

The Statute "De Falsa Moneta" appears to have been made in the same year, and is expressed to have been made by the king, with the common assent of the prelates, earls, and barons of the kingdom,—words which seem to exclude knights, citizens, and burgesses.

Origin of the representative system.

In fact, it was the necessity for obtaining money by general charges on the king's subjects, which produced the representative system; and finally led to the establishment of the House of Commons, as a necessary part of the legislature for *all purposes*.

The crown exercised a discretionary power, in summoning the members of the legislature.

That the king took upon himself to dispense with the attendance of particular persons, when he did not mean to require an aid, by omitting to summon them, is evinced by the fact, that two parliaments were held at this period, to which the attendance of the archbishop, bishops, abbots, and priors of the province of York was not required.

The king had also exercised this power of dispensation, in the eleventh year of his reign, when no prelates were summoned to Shrewsbury, although ninety-nine barons were sum-

moned; and those summoned to parliament in 23 Edward I. were only fifty-three; and of the ninety-nine summoned in 11 Edward I. to Shrewsbury, above sixty were not summoned to the parliament at Westminster in 23 Edward I., nor were any persons of the same surname summoned to the latter parliament. In fact, after the twenty-third year of his reign, he seems to have frequently omitted to summon by special writs, persons whom he had before summoned, and, in many instances, did not summon the descendants of persons, who had been summoned during their lives<sup>39</sup>.

The desire of the king to withstand the papal encroachments, probably contributed, with his pecuniary wants, to impose on him the necessity, of deferring much to his parliament in the latter part of his reign, and of considering that assembly, when convened for legislative purposes, as a body generally representing the whole people of the kingdom.

But, notwithstanding, at the close of his reign, he took upon himself (to a certain extent) to supersede the authority of the parliament of the thirty-third year of his reign, by qualifying the execution of the "Statute of Carlisle," which seems to show, that the principles of a constitutional government were not then perfectly understood, or were not well settled by practice; or that the crown assumed a dispensing power, not consistent with the supremacy of a legislative assembly, in matters of legislation.

Edward, throughout his reign, sometimes submitted to the control of parliament, and on other occasions usurped an authority in opposition to that control, which demonstrates, not only his unwillingness to submit to that control, but a want of certainty as to the authority, both of the king and of parliament:—but subsequent practice, and acquiescence in practice, have generated what may be deemed a custom, though not of very ancient origin, and thus formed the law, by which the constitution of the legislative assemblies of this country, have been brought to their present state.

By concessions to the commons, our kings maintained and extended their prerogatives over the barons. By espousing the national interest, the barons continued able to cope with the crown, till they broke among themselves; nay, even the

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Conciliatory policy of the king towards parliament.

Dispensing power of the king.

"Statute of Carlisle."

Uncertain character of the royal and parliamentary authority.

The king, barons, and the clergy, so many factions in the state.

<sup>39</sup> 1 Rep. Dig. Peer. 190, 191.



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church, notwithstanding that ancient and close alliance between secular and ecclesiastical tyranny, was forced, on some few occasions, to be a friend to the liberties of the people.

The king, the barons, and the clergy, as Bolingbroke justly observes<sup>40</sup>, were all, in reality, enemies to public liberty. Their party were so many factions in the nation; yet they all helped, in their turns, to establish liberty.

Vices of mankind, and misfortunes of a country, advantage ous to liberty.

In truth—everything, even the vices of mankind, and the misfortunes of a country, will turn to the advantage of liberty, where the spirit of it is maintained with vigour: as everything, even the good qualities of mankind, and the prosperity of a country, may operate a contrary effect, where this spirit is suffered to decline.

#### SECTION VI.

EDWARD II., July 7, A.D. 1307,—January 20, A.D. 1327.

1. Increased Spirit of Liberty. 2. Legislative Assemblies.

##### 1. *Increased Spirit of Liberty.*

**EDWARD II.**  
1307—1327.

The rising spirit of resistance to assumptions of arbitrary power, had manifested itself on different occasions; and though repressed in some degree, by the ability and address of Edward, it was actively exerted under the contemptible administration of his son, who permitted the whole machine of government to be torn in pieces, with fury and violence.

Coronation oath recognises the limited power of the crown.

Edward II., at his coronation, swore to grant, observe, and confirm to the people of England, the laws and customs granted to them by the ancient kings of England, his predecessors, and particularly the laws, customs, and franchises granted to the clergy and people by Edward the Confessor; and that he would grant to hold and keep the laws and customs, which the commonalty (communaute) of the kingdom should have elected<sup>1</sup>.

This oath recognised, not only the limitation of the royal power by existing laws, but that the power of altering these

<sup>40</sup> Boling. Hist. Eng. 49.

<sup>1</sup> Federa, N. E. tom. ii. 36.

laws, and enacting others, could only be exercised with the consent of the "communaute,"—words which, in the existing state of things, could be alone considered as meaning, the "lords and commons" assembled in parliament, and representing the whole "commonalty of the realm,"—as had been practised in 23 Edward I.

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In 2 Edward II. the commons granted the twenty-fifth penny of their goods, upon this condition, that "the king should take advice and grant them redress upon certain articles wherein they were aggrieved;" and which were eleven in number, and to the following effect:—1. That the king's purveyors seized great quantities of victuals without payment; 2. That new customs were set on wine, cloth, and other imports; 3. That the current coin was not so good as formerly; 4. and 5. That the steward and marshal enlarged their jurisdiction beyond measure, to the oppression of the people; 6. That the commons found none to receive petitions addressed to the council; 7. That the collectors of the king's dues (*pernours des prises*) in towns and at fairs, took more than was lawful; 8. That men were delayed in their civil suits by writs of protection; 9. That felons escaped punishment by procuring charters of pardon; 10. That the constables of the king's castles took cognizance of common pleas; 11. That the king's escheators ousted men of lands held by good title, under pretence of an inquest of office\*.

Redress of grievances required by the commons.

The king distinctly promised to redress these grievances, but as to the augmented customs on imports, he evasively answered, "that he would take them off, till he should perceive, whether himself and his people derived advantage from so doing, and act thereupon as he should be advised;" accordingly, the next year, he issued writs to collect these new customs again<sup>3</sup>.

Redress of grievances granted.

Edward was, by an assembly composed of prelates, earls, and barons, put under control by ordinances, in consequence of which, the royal authority was almost annihilated, and a tyrannical aristocracy established<sup>4</sup>; but such proceedings were

The crown controlled by ordinances

\* 1 Rot. Parl. 441. Prymne's 2 Register, 68. 3 Hallam's Middle Ages, 58, 59. 2 Lingard, 491.

<sup>3</sup> 3 Hallam's Middle Ages, 60. Prymne's 2 Register, 75.

<sup>4</sup> *Fœdera*, N. E. tom. ii. 105. 1 Rot. Parl. 281, 447. Ryley, *Plac. Parl.* 526, 529, 530, 541. 3 Rymer, 337. 8 Henry, 133. 2 Lingard, 494—497. 2 Hume, 333, 334. 1 Stat. Realm, 157, 158.

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subsequently treated as an unconstitutional assumption of power, and therefore annulled<sup>b</sup>: the king, however, wanted ability to avail himself of his resources, when relieved from the restraints to which he had been subjected, and his misconduct, with the consequent discontent of his people, were productive of the events which ended in his death<sup>c</sup>.

## 2. *Legislative Assemblies.*

Imperfect preservation of records.

During the reign of Edward II. the Rolls of Parliament are imperfect, and all the other documents imperfectly preserved, arising from the disturbed state of the country, and from omissions in entering the public transactions on record.

Dispensing power.

Apparent irregularity prevailed in the constitution of the legislative assemblies, for even in the eighth year of this reign, the king and his council assumed the power of acting legislatively in certain cases, even upon subjects determined by statute, "notwithstanding the statute," and on such proceedings, seems to have been founded the claim of a dispensing power in the crown<sup>d</sup>.

Award of exile of Hugh le Despencer.

Of the proceedings in parliament under the writs of May 15<sup>e</sup>, 14 Edward II., there is no evidence in the printed collection of Rolls; but in the authorised collection of Statutes, the award of exile of Hugh le Despencer annexed to the Close Roll of 15 Edward II. has been inserted. This instrument is remarkable as being the first, in which the earls and barons are styled "peers of the land," an appellation since constantly appropriated to the temporal lords of parliament; and although the prelates and commons are made parties to the instrument, yet it is observable that, the award of exile is by the "peers of the land, earls and barons," without mention either of the prelates or of the commons; at the same time, the consent for the return of the Despenchers is required to be that, of the prelates, earls, and barons in parliament duly assembled, but still without mentioning the commons; in fact, until 15 Edward II., it was not distinctly understood, that to make a law on every subject,

First mention of "peers of the land."

<sup>b</sup> 5 Parl. Hist. 176. 2 Lingard, 531. 8 Henry, 133.

<sup>c</sup> 2 Hume, 352—362. 2 Lingard, 534—550.

<sup>d</sup> Rot. Parl. 8 Edward II. 292.

<sup>e</sup> Claus, 14 Edward II. in dors. m. 5.

the consent of the commons was necessary; it being thought sufficient, if the sanction of those should be given, whose interests were to be directly and immediately affected<sup>3</sup>.

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The assent of the commons does, however, appear in two revolutionary proceedings,—the appointment of the lords ordainers in 1312<sup>4</sup>, and that of Prince Edward as guardian of the realm, in the rebellion which ended in the king's dethronement; and the commons were consulted upon the ordinances to be made for the reformation of the government. In the former case, it indicates that, the aristocratic party then combined against the crown, were desirous of conciliating popularity; in the latter case, the deposition of Edward II., the commons' assent was pretended, in order to give more speciousness to the transaction<sup>5</sup>.

The most important document of this reign is Stat. 15 Edward II.<sup>6</sup>, by which it was enacted that, for ever thereafter all manner of ordinances or provisions, made by the subjects of the king or his heirs, by any power or authority whatsoever, concerning the royal power of the king or his heirs, or against the estate of the crown, should be void, and of no avail or force whatsoever; but the matters to be established for the estate of the king and of his heirs, and for the estate of the realm, and of the people, should be treated, accorded, and established in parliaments by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, *according as had been before accustomed*.

Legislative authority enacted to be in the king, lords, and commons.

This statute therefore declared the legislative authority for the estate of the king, and for the estate of the realm and of the people, to reside only in the king, with the assent of the prelates, earls, barons, and commons, assembled in parliament; and that every legislative act not done by that authority, should be deemed void, and of no effect.

Legislative power vested in the king and parliament.

But it is observable that this act speaks only of the legislative power. It leaves untouched the judicial power in parliament, in which that portion of the parliament described in the act, by the words, "the commonalty of the realm," had never taken any part, and who afterwards, in the reign of Henry IV., disclaimed a right from interference.

Judicial power left untouched.

<sup>3</sup> 1 Rot. Parl. Edward II. App. 443. 2 Prynne, 68—72. Fœdera, N. E. tom. ii. 84. 3 Hallam's Middle Ages, 58.

<sup>4</sup> 1 Rot. Parl. 281. Walsing. 97.

<sup>5</sup> Ex. mag. rot. Stat. m. 31.

<sup>6</sup> 3 Hallam's Middle Ages, 61.

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Essential difference between the Statute of 15 Edward II. and the Charter of John.

By whatever violence this statute may have been obtained, it declared the constitutional law of the realm on this important subject; and though the distinct powers of the several descriptions of persons, constituting the legislative assembly under the king, may not have been then so clearly and definitively established, as they have since been, the declaration contained in this statute, must be considered as fixing a basis, different from that which was declared in the Charter of John; and expressly founded, not on any statute, but on custom, by the concluding words, "according as had been before accustomed."

First statute by which the constitution of the legislature was distinctly described.

This statute is the first solemn act, by which the constitution of the legislative assembly of the realm was distinctly described, after the Charter of John, but which had been early abandoned as a legislative declaration.

The words of the statute declaring what then was, by *usage*, the true constitution of the legislative power of the realm, and founding the declaration upon that *usage*, do not assume that the *usage* so declared was immemorial, or even that it had prevailed for any great length of time.

The declaration is, simply, that such was the constitution of the legislative power, when the statute was made: and that such constitution had been *before accustomed*, and had acquired, *by custom*, the force of law.

Constitution of the legislative power founded on usage.

From the terms of the statute, it may be concluded that, in 15 Edward II. no express law existed upon the subject; and that the constitution of the legislative power, so declared, was founded *simply on usage*. It seems, therefore, that the constitution of the legislative power, as it was in 15 Edward II., must be considered as founded *solely on usage*, and on *such usage as prevailed at that time, and had for some time before prevailed*. To ascertain what is *now* the constitution of the legislative power, resort must be had, in the first place, to the *usage* in 15 Edward II., and then to consider how far that usage has been affected by *subsequent usage, or express law*.

More ancient usage cannot be deemed properly to control the usage in 15 Edward II. The object of the statute was to prevent reference to more ancient usage, and to render the *usage of the time*, the law of the constitution, by a declarative act.

Immemorial usage defined.

It has been supposed that a very great length of time was, in the ordinary administration of the law, deemed necessary to

constitute, what has been called immemorial usage. But this has arisen, from confounding the limitations of time introduced by positive statutes, respecting writs, with the general law on the subject, as stated by Sir Edward Coke in his first Institute<sup>7</sup>.

According to the ancient law of this country, a great length of time was not deemed necessary to give title by prescription, where there was continual usage<sup>8</sup>.

But the language of Stat. 15 Edward II. does not even import, what might be deemed immemorial usage; but only such length of usage, as warranted the legislature in assuming that, the usage had prevailed so long, as to give the people a right to its continuance.

It asserted what was *then* the constitution of the legislative power, and denied, by implication, that the legislative authority belonged, in any case, to *the king only*, or to the *prelates, earls, and barons*, assembled in parliament, *exclusive of the commonalty*; that commonalty being, at the time of passing of that act, and having been for some time before, represented by knights, citizens, and burgesses, elected according to the usage which then prevailed.

This positive declaration, involving, impliedly, the negative assertion, was aimed against the attempt which had been made by the lords ordainers, to attribute to the prelates, earls, and barons, especially summoned by special writs, powers of legislation for certain purposes, without the concurrence of the commonalty; and the statute was made not only with the concurrence of the king, but for the maintenance of his authority, as well as to support the rights of the people. It was in perfect conformity with the oath which Edward had taken

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The language of Stat. 15 Edward II. does not import immemorial usage.

The statute in conformity with the coronation oath taken by Edward.

<sup>7</sup> Co. Litt. 115 (a).

<sup>8</sup> According to the ancient law of the country, words importing that such a custom had been used "*de tempore cujus contrarium memoria hominum non existit*," meant only, as stated by Littleton, (Ten. s. 170), that no man then in life had heard any proof to the contrary. The Mirror, (Ca. 5, s. 1) considers it as an abuse to treat any time as within time of memory, of which no man could testify either of sight or hearing; which (the author adds) do not generally endure above forty years.

Bracton, (lib. 3, fol. 230), speaking of time of memory to give title to prescription, says, "*Docere oportet longum usum, illum, viz., qui excedit memoriam hominum. Tale enim tempus sufficit pro jure.*" With this Fleta (lib. 4, c. 24,) agrees. Coke upon Littleton, says, (115a.) "Time of limitation is two-fold. First in writs, and that is by divers acts of parliament; secondly, to make a title to any inheritance, and that, (as Littleton saith,) is by the common law."

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at his coronation, by which he engaged to hold and keep the laws and customs, which the "commonalty" of the kingdom should have elected.

Practice, after 42 Henry III., established a new constitution of the legislative assemblies.

The Stat. 15 Edward II., therefore proves that, at that time, practice had introduced and established a new constitution of the legislative assemblies of the realm, under the king; that it had been so introduced and established after the Charter of John, after the first Charter of Henry III., and after the parliament at Oxford, in 42 Henry III.; but before 15 Edward II.; and that such practice had prevailed so long before 15 Edward II., as to give it, in the opinion of the parliament then assembled; the force and effect of a custom, which the parliament declared, should thereafter be considered as established law.

The manner in which such matters had, immediately before that statute, been accustomed to be "treated, accorded, and established," in and from 23 Edward I., a period of thirty years; was by laws made by the king, with the assent of those lords, spiritual and temporal, to whom the king's special writ of summons had, in his discretion, been addressed for the purpose, and with the assent of the knights, elected by the responsible freemen of the several shires of the kingdom, and citizens and burgesses chosen from cities and boroughs, by all their respective free, permanent, and inhabitant householders; in pursuance of writs issued at the discretion of the king, for that purpose;—the precedent in 23 Edward I., being, apparently, after that year, the general guide, in the issue and execution of those writs.

Difficulty in assigning a reason why Wales and the counties of Chester and Durham had no representatives.

Much, however, of the constitution at this time, both of lords and commons, is involved in obscurity, it being difficult to assign a reason, why Wales, and the counties of Chester and Durham, had no representatives in the commons' house of parliament; and by what means the temporal lords, summoned by special writs, afterwards acquired the right to be members of the legislative assembly thus constituted, and transmitted a similar right to others.

Irregularity in summoning temporal lords to parliament.

In summoning the temporal lords to their parliaments, both Edward I. and his son, in many instances, used discretionary power. The number of barons specially summoned to parliament during great part of the reign of Edward I., and during the first years of Edward II., averaged about eighty. Those summoned in the latter years of Edward II., never

amounted in number to fifty, and their number was sometimes under forty.

Persons summoned to parliament at one time, were not afterwards summoned; descendants of some of those summoned at one time, were not afterwards summoned at any time; or some descendants were summoned, and some were not; and persons summoned to one parliament, were not summoned to another; from which it must be inferred that, a degree of power was exercised by the crown on this subject, which destroys the idea of rights to writs of summons by virtue of tenure; rights wholly inconsistent with the discretionary power thus exercised by the crown, from the accession of William I., and inconsistent also with that right which has been since constantly exercised by the crown, of summoning, by special writs, persons having no right to demand such writs by virtue of tenure, and of giving by patent to others in the same situation, the right to demand such writs and summons, in derogation of the rights of those entitled by tenure, if any such rights then existed<sup>9</sup>.

Subsequent to Stat. 15 Edward II., crude notions existed, derived from what was probably the ancient constitution of the common council of the realm, as expressed in the Charter of John. But those notions seem to have been principally applied to the clergy, as a part of that assembly; and to this day, the right of the archbishops and bishops to demand a writ of summons to parliament, depends on their possessing, by warrant from the crown, the temporalities of their respective sees.

The prelates are still members of the common council of the realm, *by reason of tenure*; but they have a character, as members of such council, distinct from that of the peers of the realm, who claim their dignities by *creation*, or *by prescription and descent*, and in whom the rights of their respective dignities vest, *at the instant of creation, or descent*. Their dignities are also *incapable of cession*, and *during the respective lives of those by whom they are possessed, remain indelible*, except by forfeiture, or by express act of the legislature.

It does not appear that the government of Edward II. was, comparatively speaking, tyrannical; but he was accustomed to tallage the demesne towns without any parliamentary sanction<sup>10</sup>.

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Persons summoned to parliament at one time, were not afterwards summoned.

No privilege to writs of summons, by virtue of tenure.

Right of the clergy to have a parliamentary summons, arises from a possession of the temporalities of their see.

Clergy have a distinct character from the peers of the realm.

Tallage of demesne farms.

<sup>9</sup> 1 Rep. Dig. Peer. 255—294, *passim*.

<sup>10</sup> Mad. Fir. Bur. 6. 1 Rot. Parl. 449.



EDWARD II.  
1307—1327.

Complaints of  
commoners as  
to tallage.

In 19 Edward II. the commons complained that, "whereas we and our ancestors have given many tallages to the king's ancestors, to obtain the charter of the forest, which charter we have had confirmed by the present king, paying him largely on our part; yet the king's officers of the forest seize on lands, and destroy ditches, and oppress the people, for which they pray remedy, for the sake of God and his father's soul." They likewise complained of arbitrary imprisonment, against the law of the land<sup>11</sup>. To these complaints the king promised effectual redress<sup>12</sup>.

#### SECTION VII.

EDWARD III., January 20, A. D. 1327,—June 21, A. D. 1377.

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|-----------------------------------------|-----------------------------------------------|
| 1. General Observations.                | 6. Arbitrary Exercise of the Royal Authority. |
| 2. Judicial Powers of the Peers.        | 7. Increased Importance of Parliament.        |
| 3. Alienation of Lands.                 |                                               |
| 4. Privileges of Peerage.               |                                               |
| 5. Antipathies against the Papal Power. | 8. Pecuniary Impositions.                     |

#### 1. *General Observations.*

EDWARD III.  
1327—1377.

Edward II. having resigned in favour of his son, the latter ascended the throne; his coronation succeeded, at which the oath administered to him, resembled that taken by his father<sup>1</sup>.

Conquerors, though usually the bane of human kind, proved often in the feudal times the most indulgent of sovereigns. They stood most in need of supplies from their people; and, not being able to compel them by force to submit to the necessary impositions, they were obliged to make them some compensation, by equitable laws and popular concessions<sup>2</sup>.

Increased importance of parliament.

The pecuniary necessities of Edward were such that, the parliament attained greater consideration during his reign, and acquired more regular authority, than in any former time; and even the House of Commons, which, during turbulent and factious periods was naturally depressed by the greater power of the crown and barons, began to appear of some weight in the constitution<sup>3</sup>.

<sup>11</sup> 1 Rot. Parl. 430.

<sup>1</sup> 4 Rymer, 243.

<sup>3</sup> Selden's Titles of Honor, 621. 4 Rymer, 735. 8 Henry, 155.

<sup>12</sup> 3 Hallam's Middle Ages, 60, 61.

<sup>2</sup> Robertson's Hist. Scot. B. I.

With respect to the temporal lords, the king assumed the power of giving one degree of dignity, that of "duke," which had not been given by his predecessors, and the fact shows that, the exclusive creation of titles of dignity was then considered as vested the crown.

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1327—1377.

Title of "duke" granted.

One of the most popular laws enacted by any prince was Stat. 25 Edward III.<sup>4</sup>, and which limited the cases of high treason, before vague and uncertain, to three principal heads: conspiring the death of the king, levying war against him, and adhering to his enemies; and the judges were prohibited, if any other cases should occur, from inflicting the penalty of treason without an application to parliament.

Limitation of the crime of treason.  
Stat. 25 Edw. III.  
c. 2.

In consequence of a parliamentary ordinance<sup>5</sup>, the chief justice, in 40 Edward III. addressed the lords and commons in English instead of French, which practice was afterwards continued; but the French language still continued in use in bills of parliament, and other proceedings, notwithstanding the declaration of the king's will. The English language had always prevailed as the language of the body of the people, though the French had been generally used by those of higher condition; and the adoption, though partial, of the English, in legal and parliamentary proceedings, had an important effect, in diffusing a more general knowledge of the law and mode of government, which ultimately tended to establish the constitution upon its present basis<sup>6</sup>.

Lords and commons addressed in English.

Stat. 36 Edw. III.  
c. 15.

## 2. *Judicial Powers of the Peers.*

The jurisdiction of the "Curia Regis," seems in this reign to have changed. It was the supreme court of justice, both by way of original and appellate jurisdiction, and part of the jurisdiction of this court, is at the present moment vested in the "lords spiritual and temporal."

Jurisdiction of the Curia Regis changed.

The first authentic record of its change, is an entry in the Close Roll of 1 Edward III., in which the "Placita, coram rege et consilio suo in parlamento," are described as having been "in presentia regis, procerum et magnatum regni, in parlamento suo;" thus exclusively comprising all the lords spiritual and temporal, summoned to parliament. The office

<sup>4</sup> C. 2. 1 Stat. Realm, 319. 2 Rot. Parl. 239. 3 Lingard, 117.

<sup>5</sup> Stat. 36 Edw. III. c. 15.

<sup>6</sup> 1 Rep. Dig. Peer. 295—334, *passim*.

**EDWARD III.  
1327—1377.**

The judges cease  
to be integral  
parts of the  
legislature.

The lords take  
the title of judges  
of the parlia-  
ment.

Trials of Simon  
de Beresford,  
Thomas de Ber-  
keley, and Earl  
of March.

Judgment of the  
Earl of March  
reversed.

Illegal assem-  
blies.

of chief justiciary had then ceased; the chancéllor had become the first law officer of the crown; the King's Bench, Common Pleas, and Exchequer had become separate courts; the judges took rank according to their anciently as judges, the chiefs of each court only having precedence, and at this period were considered merely as assistants in parliament,—not as integral and component parts of the legislature.

It is evident that the principles on which the judicial proceedings of the lords, according to the present constitution of parliament, ought to have been regulated, were not definitively settled in 4 Edward III. They assumed to themselves, and were allowed by the king, the title of *judges of the parliament*; they protested against being required to judge Simon de Beresford, because he was not their peer; and they suffered Thomas de Berkeley, who was their peer, to be tried by a jury of knights in a proceeding "*coram rege in pleno parlamento*," without any interference, as far as appears, on their part.

It is true that Berkeley upon his arraignment had put himself "*super patriam*;" but, as Richard, son of Edmund, Earl of Arundel, alleged in the same parliament, by the great charter no earl, baron, or other person of the kingdom was to be proceeded against, but by judgment of his peers; and therefore the trial of Thomas de Berkeley in full parliament by twelve knights, who were not his peers, seems to have been as irregular a proceeding, though not so unjust, as the condemnation by the peers, of Roger Mortimer, Earl of March, their peer, and Simon de Beresford, not their peer, without trial, on the supposed notoriety of the truth of the charges made against them.

The judgment of the Earl of March, as in the case of the Earl of Lancaster, was after his execution reversed, because it was without trial, and it might also have been deemed erroneous, for want of a lawful presentment of the offence to warrant such a trial.

The king in the sixth year of his reign communicated to parliament that, "*divers persons, in defiance of the law, assembled in great companies, and committed great outrages,*" and requested the prelates, earls, barons, "*et autres grantz*," to advise him on the subject.

<sup>1</sup> There was at this period no distinction between temporal peers, except "*earls*" and "*barons*;" though in many entries in the Parliament Rolls

The prelates stated it did not belong properly to them, to consult about keeping the peace, or the chastisement of the offences stated, and went by themselves to consult<sup>2</sup>.

EDWARD III.  
1327—1377.

Attempts of the clergy to separate themselves from the laity.

This separation of the prelates from the rest of the assembly, because it did not belong to them to consult about keeping the peace, and the chastisement of felons, is a remarkable instance of the attempts of the clergy to separate themselves from the laity, and perhaps will serve to explain, why many laws appear to have been made, without the concurrence of the prelates. In this instance, they were no parties in proposing those regulations, which were subsequently enacted, for the preservation of the peace, though they afterwards gave their assent;—but the exercise of their separate authority by excommunication and ecclesiastical censures was, for themselves, an ample protection.

### 3. *Alienation of Lands.*

An important law was passed in 1 Edward III. with respect to the alienation of lands holden in chief of the crown, which took from the king all power of preventing such alienations, when the lands were holden of him in chief as of his crown, binding him to receive a reasonable fine for alienation<sup>1</sup> without his licence. At the same time the king disclaimed any right, to prevent alienation of lands holden of him in chief as of an honour escheated, or which had otherwise come to his hands.

Stat. 1 Edward III. c. 12.

After this statute alienation of lands could not be prevented, which were holden of the king in chief, as of his crown; and if the dignity of peerage had been incident to the tenure of lands so holden, the alienation must have conveyed the dignity as incident to the tenure, against the will of the king; even though the crown might have expressly declared its will, by refusing to license the alienation.

The crown incapable of preventing alienation of lands.

It is extraordinary, if the tenure of land had the effect of giving to the tenant the dignity of peerage, that after 1 Edward III., if not before, no person should have availed himself of this consequence of tenure to obtain that dignity, or that the legislature, should not have been aware that, by taking away restraint of alienation, such consequences might follow, and should not have provided against it.

the words, "et autres grantz," are used, but their adoption was to describe those members of the king's council who were not "earls" or "barons," and the king's judges who were present in parliament.

<sup>2</sup> Rot. Parl. Edward III. 64.

<sup>1</sup> 2 Inst. 67. Bro. Alienat. 34. Fitz. Quare Impedit, 54.

EDWARD III.  
1327—1377.

#### 4. *Privileges of Peerage.*

Privileges of  
peerage recog-  
nised in 14 Ed-  
ward III.

The confinement of the privileges of peerage, to those called the peers of the realm, as a personal privilege, giving no privilege or even legal rank to their families, and moulding all who had not that privilege, however high their birth, into the mass of the commons, is an important constitutional feature, and was *first* clearly recognised in this reign by articles from the king, which were assented to by the prelates, earls, barons, “et autres grantz,” and all the commons of the realm assembled in parliament. It was ordained that, no peer of the land, officer, or other, by reason of his office, or of things touching his office, nor for any other cause, should be drawn into judgment to lose his temporalities, lands, tenements, goods, or chattels, or to be arrested, imprisoned, outlawed, exiled, or forejudged, or compelled to answer or be judged, except by award of the peers in parliament; saving always to the king and his heirs, in other cases, the laws rightfully used, and by due process; and saving also the suits of parties. And if any peer of his own will would otherwise answer, or be judged otherwise than in parliament, that it should not turn to the prejudice of the other peers, or to himself in any other case, except if any peer should be sheriff, or farmer of fee, or had been officer, or received the king’s money or other chattels, by reason of which office or receipt, he was bound to account, so that he should account by himself or his attorney in the accustomed places<sup>1</sup>.

Privilege of peer-  
age is inseparable  
from the person.

Thus confining the privileges of the peer, which distinguish him from all other subjects of the realm, to his person, except as his heir after his death, might claim the dignity of peer of the realm.

Extends to the  
wives and  
widows of peers.

This privilege attaches at all times;—is distinct from that privilege of parliament, which belongs to the members of both houses of parliament; it exists when there is no parliament, as well as when there is a parliament;—it extends to their wives and widows as partaking of their personal privilege, and is lost to the widow, when by a second marriage, she loses the character of widow of a deceased peer.

<sup>1</sup> 2 Rot. Parl. 126, 127. 1 Rep. Dig. Peer. 313. Vide etiam 5 Rymer, 282. 3 Lingard, 38.

EDWARD III.  
1327—1377.

5. *Antipathies against the Papal Power.*

The nation entertained violent antipathies against the papal power. The parliament pretended that, the usurpations of the pope were the cause of all the plagues, injuries, famine, and poverty of the realm ;—were more destructive to it than all the wars ;—and were the reason why it contained not a third of the inhabitants and commodities which it formerly possessed ;—that the taxes levied by him exceeded five times those which were paid to the king ;—that everything was venal in that sinful city of Rome ;—and that even the patrons in England had thence learned to practise simony, without shame or remorse<sup>1</sup> ;—the king was even petitioned by parliament to employ no churchman in any office of state<sup>2</sup>, and they threatened to repel by force the papal authority, and thereby providing a remedy against oppressions, which they could not, nor would any longer endure<sup>3</sup>.

Taxes levied by  
the See of Rome.

Such feelings caused the enactment of the “ Statute of Provisors<sup>4</sup>,” rendering it penal to procure any presentations to benefices from the court of Rome, and securing the rights of all patrons and electors, which had been extremely encroached on by the pope ; and by a subsequent statute<sup>5</sup>, every person was outlawed, who carried any cause by appeal to the court of Rome<sup>6</sup>.

The Statute of  
Provisors. Stat.  
27 Edw. III. c. 1 ;  
30 Edw. III. c. 1.

These feelings of distrust prevailed in 51 Edward III., as amongst the petitions of the commons of that year is one, that no statute nor ordinance should be made or granted at the petition of the clergy, if it should not be by assent of the commons, and that the commons should not be bound by any “ constitutions,” which the clergy made for their own advantage, without the assent of the commons, for the clergy would not be bound by any of the king’s statutes or ordinances, made without their assent<sup>7</sup>.

The commons  
refuse to be  
bound by the  
constitutions of  
the church.

Throughout this reign and those of Edward I. and II., there appears to have been a continual struggle of the clergy, to exempt themselves from the control of the temporal power,

Struggle by the  
clergy to be free  
from temporal  
power.

<sup>1</sup> Cotton, 74, 126, 129.

<sup>2</sup> Ibid, 112.    2 Hume, 493.

<sup>3</sup> 1 Cotton, 41.

<sup>4</sup> 25 Edward III. Stat 6.    27 Edward III. Stat. 1.

<sup>5</sup> 27 Edward III. c. 1.    38 Edward III. Stat 2, c. 1.

<sup>6</sup> 2 Hume, 492, 493.    Vide post infra tit. “ Reformation,” temp. Henry VIII.

<sup>7</sup> 3 Lingard, 124, 125.

EDWARD III.  
1327—1377.

and a strong disposition on the part of the lords and commons, and especially of the commons, to resist their pretensions; but the king, dreading a contest with the clergy, appears to have endeavoured to support the temporal authority to a much less extent, than that to which the commons would have carried it.

Existence of a  
distinct conven-  
tion.

The existence of a distinct convention, consisting of the prelates, and representatives of the clergy, assembled at the same time with the prelates and other lords of parliament, and the representatives of the commons, under the king, and claiming exemption as to their spiritualities, with the property which they included under that denomination, from the power of parliament, and rendering aid to the king, by their exclusive grants out of those revenues, which were not considered liable to any charges under the general legislative assemblies of the country, had tended to create, in some degree, two legislative assemblies,—one spiritual and the other temporal. The prelates being, from their numbers and riches, influential members of both assemblies, and as the aids to be expected, from what they termed their spiritual possessions, depended entirely on the votes of the clergy, whilst the prelates had equal votes with the temporal lords, in charging all other property, rendered the crown very cautious in its contests with the ecclesiastics, and unwilling to give them offence.

But it is evident whilst such privileges were recognised, the constitution of the legislature for all purposes, was not completely established on its present basis.

#### 6. *Arbitrary Exercise of the Royal Authority.*

Frequent con-  
firmation of  
statutes required.

A statute which had been enacted some years, instead of acquiring, was imagined to lose force by time, and needed to be often renewed, by subsequent statutes of the same sense and tenour. Hence, likewise, that general clause so frequent in old acts of parliament, that the statutes enacted by the king's progenitors should be observed<sup>1</sup>; a precaution which, if the circumstances of the times be not considered, might appear absurd and ridiculous; and the frequent confirmations, in general terms, of the privileges of the church, proceeded from the same cause<sup>2</sup>.

<sup>1</sup> 36 Edward III. c. 1. 37 Edward III. c. 1.

<sup>2</sup> 2 Hume, 488.

The charter or statute “de Tallagio non concedendo,” though never repealed, seems to have already lost by age all its authority, for there was no act of arbitrary power, more frequently repeated by Edward than that, of imposing taxes without consent of parliament, of which there are numerous instances in the first<sup>3</sup>, thirteenth<sup>4</sup>, fourteenth<sup>5</sup>, twentieth<sup>6</sup>, twenty-first<sup>7</sup>, twenty-second<sup>8</sup>, twenty-fifth<sup>9</sup>, thirty-eighth<sup>10</sup>, fiftieth<sup>11</sup>, and fifty-first<sup>12</sup> years of his reign, and he openly avowed and maintained such power.

All the high prerogatives of the crown were exercised in this reign; but it gave consolation, and was considered as a presage of their ultimate annihilation, that they were indignantly complained of by the commons<sup>13</sup>: such as the dispensing power<sup>14</sup>, extension of the forests<sup>15</sup>, erecting monopolies<sup>16</sup>, exacting loans<sup>17</sup>, stopping justice by particular warrants<sup>18</sup>, the renewal of the commission of trailbaton<sup>19</sup>, pressing men and ships into the public service<sup>20</sup>, levying arbitrary and exorbitant fines<sup>21</sup>, extending the authority of the privy council to the decision of private causes<sup>22</sup>, enlarging the power of the mareschal’s and other arbitrary courts<sup>23</sup>, imprisoning members for freedom of speech in parliament<sup>24</sup>, obliging people, without any rule, to send recruits of men-at-arms, archers, and hoblers to the army<sup>25</sup>.

EDWARD III.  
1327—1377.

The commons  
protest against  
the tyranny of  
the crown.

### 7. Increased Importance of Parliament.

The commons increased in power, notwithstanding the exactions, evasions, and authority of the king, the principles being recognised that, no alteration in the law could be effected, except through the instrumentality of the lords and commons, that involuntary pecuniary taxation was illegal, that the commons possessed the privilege of impeachment; with a right of investigating public abuses<sup>1</sup>. Thus the king in the twenty-

Acquisition of  
privileges by the  
commons.

<sup>3</sup> 4 Rymer, 363.

<sup>4</sup> Ib. 17, 18.

<sup>5</sup> Ib. 39.

<sup>6</sup> Ib. 47.

<sup>7</sup> Ib. 52, 53, 57, 58.

<sup>8</sup> Ib. 69.

<sup>9</sup> Ib. 76.

<sup>10</sup> Ib. 101.

<sup>11</sup> Ib. 138.

<sup>12</sup> Ib. 152.

<sup>13</sup> Rot. Parl. Edward III. 66, 104, 160, 161, 166, 201.

<sup>14</sup> Cotton’s Abr. 148.

<sup>15</sup> Cotton, 71.

<sup>16</sup> Cotton’s Abr. 51, 61, 122.

<sup>17</sup> 5 Rymer, 491, 574. Cotton’s Abr. 56.

<sup>18</sup> Cotton, 114.

<sup>19</sup> Ibid. 67.

<sup>20</sup> Cotton’s Abr. 47, 79, 113.

<sup>21</sup> Ibid. 32.

<sup>22</sup> Ibid. 74.

<sup>23</sup> Ibid.

<sup>24</sup> Walsling. 189, 190.

<sup>25</sup> 8 Tyrrell’s Hist. 554. 2 Hume, 490. 3 Lingard, 131, 132.

<sup>1</sup> Rot. Parl. Edward III. 237, 253. Vide post infra, 121.



EDWARD III.  
1327—1377.

Ordinance of the  
Staple.

Distinction be-  
tween an ordi-  
nance and a  
statute.

Recognition of  
the Stat. 15  
Edward II.

seventh year of his reign held what was called a great council at Westminster, in which the "*Ordinance of the Staple*" was promulgated. To this council only one knight was summoned<sup>2</sup> for every county, and two citizens or burgesses were required from thirty-seven cities and boroughs, by writs directed to their officers, and not the sheriffs of the counties, no writs being sent to the other places, from which representatives had been usually required. This assembly, therefore, was not that, which had been customarily convened within the meaning of Stat. 15 Edward II., for the constitution of a legislative assembly; and those which attended had not, according to the provisions of such statute, the power of making laws, touching the estate of the king and common profit of the realm.

The commons assembled in the council, though they approved of the ordinances, objected to the authority, by which it was proposed that they should be sanctioned; though such ordinances, according to earlier practice, would have been deemed legal by the king's order in council. They suggested the propriety of the ordinances being embodied in a statute, by the lords spiritual and temporal, and by the knights, citizens, and burgesses, duly elected, and assembled at a subsequent parliament, by which the ordinances of the council could alone receive the force of law.

This suggestion was so far submitted to by the king that, although he insisted on the ordinances being in the mean time obeyed as law, he agreed they should have the authority of a subsequent parliament, and at the next parliament, 28 Edward III. they were submitted to the consideration of parliament, and being approved of, were entered on the Statute Roll as a statute<sup>3</sup>.

This demonstrates what was then considered by the commons, and in some degree recognised by the king, to be the difference between an ordinance and a statute;—the commons insisting that an ordinance had not the force of law, though assented to by a great council assembled by the king, in which persons summoned as representatives of the commons were present, but not summoned in the manner, which custom required for a representation of the commons in parliament.

<sup>2</sup> Clans. 27 Edward III. in dors. m. 12.

<sup>3</sup> M.S. Reg. 19 A, XIV. Rot. Parl. 27 Edward III. 253, 257. 2 White-locke on Parliamentary Writs, 297. 5 Rymer, 282. 3 Lingard, 120. 1 Ruffhead's Stat. 276.

This transaction was a complete acknowledgment that, the constitution of the government, for the purposes of legislation, was truly declared by Stat. 15 Edward II.<sup>4</sup>

EDWARD III.  
1327—1377.

### 8. *Pecuniary Impositions.*

Considering the proceedings in parliament<sup>1</sup>, and the commissions upon the Patent Roll of 6 and 7 Edward III., it may be inferred that, at this time, the grants of the cities and boroughs in parliament, were intended to supersede the king's right of tallage of his demesnes.

Tallage of  
boroughs.

From an early period the boroughs, when about to be tallaged, frequently offered in its place a sum of money, under the name of a "gift," which, if it were accepted, was assessed and paid by their own magistrates<sup>2</sup>. The greatest part, if not all, of the cities and boroughs sending representatives to parliament, were, or had been, part of the king's demesnes, or in the king's hands, and, as such, liable to tallage; they might, therefore, consent to tax themselves in a mode, which may have been less vexatious and burdensome to individuals, and yet produced more to the crown, and therefore was accepted by the crown instead of tallage,—and at the same time the power of the commons would be increased<sup>3</sup>.

In 22 Edward III., the commons granted a subsidy, on condition that, thenceforth there should be no imposition, tallage, or charge, by way of loan ("d'Aprést") without the grant and assent of the commons in parliament; and that these conditions, should be entered on the Roll of Parliament as a matter of record, and should also be expressed in letters patent, and sent to all the counties of England, without fee, under the great seal<sup>4</sup>.

Illegality of arbitrary taxation.

In 20 Edward III., that distinction was established, which was afterwards revived in the reign of James I., between customs levied on merchandize at the ports, and internal taxes. The statute "Confirmatio Chartarum," had taken away the prerogative of imposing internal taxes,—its language was not so explicit as to the former; but the intention of the

Customs levied on merchandize at the ports, and internal taxes.

<sup>4</sup> Vide ante, 99, 105. 3 Inst. 1, 6, 113.

<sup>1</sup> Rot. Parl. Edward III. App. 446.

<sup>2</sup> 1 Brady, 178. 2 Lingard, 374.

<sup>3</sup> 2 Rot. Parl. 66, 446, 447. 3 Hallam's Middle Ages, 63. 3 Lingard, 128.

<sup>4</sup> Rot. Parl. Edward III. 161, 166, 200, 201. 3 Lingard, 124, et seq.

EDWARD III.  
1327—1377.

legislature was to annul every species of taxation, unless sanctioned by parliament, *Magna Charta* having only provided that, foreign merchants should be free from all tributes except the ancient customs<sup>5</sup>.

Dispensing  
power.

But Edward, notwithstanding the enactments which have been cited, always maintained a claim to impose charges upon his subjects in cases of great necessity, and for the defence of his kingdom<sup>6</sup>; and in the fifteenth of his reign, took upon himself to repeal, by proclamation, an act of parliament, assigning as reasons, that his assent had been involuntary, and that the act in question was inconsistent with the prerogatives of the crown, which he was bound by his coronation oath to maintain<sup>7</sup>.

Principles of representation and taxation not precisely defined.

It seems, from the entries on the Parliament Rolls, that the modern principles of representation and taxation, were not clearly settled and understood in this reign; thus, in 18 Edward III., separate grants were made to the king, by the clergy of the provinces of Canterbury and York, in their several convocations, and by the commonalty, and by the cities and boroughs in parliament, no grant being made by the temporal lords, which shows that, the principle of a general legislative power for the purposes of taxation, was not then fully adopted; neither did it exist in 46 Edward III., for after leave was given to the knights of counties to depart, and had departed, the citizens and burgesses were ordered to remain<sup>8</sup>, and they were prevailed upon to grant to the king, a continuation for a year, of an aid granted in the former year, of certain duties on wines, and other merchandize coming to the kingdom. This duty immediately affected the cities and boroughs as merchants, but it indirectly affected the whole kingdom, and was in direct violation of the declaratory Stat. 15 Edward II. The legality of this grant was recognized on the principle, that the persons immediately to be charged, might grant an aid to the king of duties chargeable in the first instance upon themselves, though the charge might ultimately affect the whole kingdom.

Fluctuating state  
of the constitution.

The fluctuating state of the constitution is illustrated, by

<sup>5</sup> 2 Howell's State Trials, 371—519. Hale's Treatise on the Customs, in Hargrave's Tracts, vol. i. 3 Lingard, 128. Vide ante, 117.

<sup>6</sup> 2 Rot. Parl. 366. 5 Rymer, 282. Cotton Abr. 132, 152. 8 Henry, 152, 153. 2 Hume, 491. 3 Lingard, 128, 129, 131—133.

<sup>7</sup> 8 Henry, 152. 3 Lingard, 128, 129, 131—133. 1 Ruffhead's Stat. 233.

<sup>8</sup> 3 Lingard, 133; et Rot. Parl. Edward III. passim.

two events in 45 and 46 Edward III. Parliament made a mistake in the assessment of the taxation, but were dissolved without its being discovered. Upon its detection, the king summoned a council, consisting of one knight, citizen, and burgess, named by himself, out of two that had been returned to the last parliament; and such council rectified the mistake, and which was not made a ground of subsequent complaint<sup>9</sup>.

In 46 Edward III., after the petitions of the commons had been answered, and the knights dismissed, the citizens and burgesses were convened, before the Prince of Wales and the lords, in a room near the White Chamber, and solicited to renew their subsidy of 40s. upon the tun of wine, and 6d. in the pound upon other imports, for safe convoy of shipping, during one year more; to which they assented, and so departed<sup>10</sup>.

Nothing indicates more forcibly a change in the constitution, than the artful policy of Edward, in consulting the commons upon the questions of war and peace with France; so that seemingly acting under their advice, no complaints could be urged as to the expenses<sup>11</sup>; and the equally artful policy, adopted by the Prince of Wales and the Earl of March, in employing the commons as tools to overthrow an unpopular ministry, by petitioning the king to increase his council, by "ten or twelve bishops, lords, and others, to be constantly at hand, so that no business of weight should be dispatched without the consent of all, nor smaller matters without that of four and six;" and in another petition impeaching Lords Latimer and Nevil, with four merchants, for public abuses<sup>12</sup>. Precedents were thus established, and the commons ultimately succeeded in acquiring a right of interference, into all cases of public abuse and policy.

EDWARD III.  
1327—1377.

Taxation sanctioned by citizens and burgesses only.

Origin of the commons, acquiring a right of interference in cases of abuse and policy.

A. D. 1376.

<sup>9</sup> Rot. Parl. Edward III. 304. 2 Brady, 161. Pryme's 4 Register, 289. 8 Henry, 147.

<sup>10</sup> Rot. Parl. Edward III. 310. 3 Hallam's Middle Ages, 70.

<sup>11</sup> 5 Rymer, 165. Cotton's Abr. 108, 120. 2 Hume, 487.

<sup>12</sup> Cotton's Abr. 122. Rot. Parl. Edward III. 322—329, 374. 3 Hallam's Middle Ages, 83. 3 Lingard, 106.

## SECTION VIII.

RICHARD II. June 21, A.D. 1377,—September 29, A.D. 1399.

- |                                                                                      |                                                  |
|--------------------------------------------------------------------------------------|--------------------------------------------------|
| 1. General State of the Country.                                                     | King to create Peers, and                        |
| 2. Provisions to enforce the attendance of Members of Parliament; Prerogative of the | grant the right of Parliamentary Representation. |
|                                                                                      | 3. Pecuniary Impositions.                        |

1. *General State of the Country.*

RICHARD II.  
1377—1399.

The reign of Richard II. affords, but little matter that may shine in history; and cannot boast of any one great and distinguished captain; any one memorable battle or important siege; but prorogations of truces, abstinences, sufferances, patience, tolerances, were the language and amusement of the times; and treaties were all the while kept on foot for a perpetual peace,—treaties hitherto fruitless, illusory, and impracticable.

The vicissitudes of this period have, however, rendered it an important period in the constitutional history of the country: the deposition of the king, and the substitution of a successor to his throne, not the heir of the royal family, by the authority of the lords and commons assembled in parliament, taught the people the increased power of that assembly.

William Rufus, Henry I., Stephen, and John, had acquired the throne out of the direct line of succession; but their advancement was attributable to accidental circumstances, united with the power and influence of individuals, and not to a national spirit of liberty, manifested in any great legislative assembly.

Causes of the increased power of the people.

The spirit of independence, and the power and importance of the body of the people, which was manifested in this era, may be ascribed to the subdivision of property, the increase of tenancy in chief of the crown, alienations of the crown lands, grants of franchises, the civil contests in the reign of John and Henry III., the necessities of Edward I., the weak and disturbed government of Edward II., his dethronement, and the succession of his son, sanctioned by the authority of a legislative assembly, the vast expenses of the wars in the reign of Edward III., which had compelled that prince frequently to have recourse to his people for pecuniary aid, and had at length

given to the legislative assembly of the kingdom, and particularly to the commons assembled in parliament, a portion of that power<sup>1</sup>, which in time produced the constitutional system, on which the government of the country now rests.

**RICHARD II.**  
**1377—1399.**

In this reign, the greatest abuses and violations of law and justice obtained; high prerogative doctrines were insisted on; judgments of treason and attainders were had, without due examination or trial; the encroachments of the civil law were favoured, because they inculcated doctrines of passive obedience; the Statute of Treasons was infringed; and a member of the legislature (Sir Thomas Haxey) was condemned to die the death of a traitor, for having moved, that economy might be promoted at court, and that, to attain such end, the court should not be so much frequented by bishops and ladies<sup>2</sup>.

Unconstitutional  
abuses.

Salutary provisions were however made, for regulating the prices of labour and provisions; increasing the number, and regulating the proceedings, of justices of the peace; and also for the encouragement of navigation, trade, and commerce, by which merchants of England, could neither export nor import any goods but in English ships, which may be considered as the first "Navigation Act."

Regulations of  
police and com-  
merce.

At the commencement of this reign, the insurrection of the people threatened the dissolution of all government<sup>3</sup>; about the middle of it, a powerful combination of the nobles annihilated the prerogatives of the crown, and engrossed the whole power of the state<sup>4</sup>; and towards its termination, the court party gained the ascendant: and Richard, supported by a junto of his favourites, invested with unconstitutional powers by an obsequious parliament<sup>5</sup>, acted in a manner so arbitrary and imprudent<sup>6</sup>, that he lost the affections of his subjects, and gave an opportunity to a bold usurper, to deprive him of his crown and life. It is difficult to determine in which of the above situations the people were most oppressed, or the greatest acts of tyranny were perpetrated<sup>7</sup>: but the

Public anarchy.

<sup>1</sup> Rot. Parl. Richard II. *passim*.    <sup>2</sup> Cotton's Abr. 362.    <sup>3</sup> Henry, 164.

<sup>3</sup> 2 Froissard, cc. 74, 75, 77.    Walsing. 248—267.    Knyghton, 2637.    <sup>3</sup> Hume, 10—12.    <sup>3</sup> Lingard, 176—184.

<sup>4</sup> Cotton, 315—322.    Knyghton, 2686—2715.    <sup>3</sup> Hume, 17, et seq.    Stat. 11 Richard II. c. 1, et seq.    <sup>3</sup> Lingard, 208—210, 220.

<sup>5</sup> 8 Rymer, 7.    Cotton, 360.    <sup>4</sup> Froissard, c. 90.    Walsing. 354.    Stat. 21 Richard II. c. 20.    <sup>3</sup> Hume, 31.    <sup>3</sup> Lingard, 224.

<sup>6</sup> Cotton, 399, 400.    <sup>2</sup> Dugdale, 71.    <sup>3</sup> Tyrrel, part ii. 991.    <sup>3</sup> Hume, 36—42.    <sup>3</sup> Lingard, 258.    <sup>3</sup> Hallam's Middle Ages, 114, 119.

<sup>7</sup> 8 Henry, 166.

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ancient history of England is nothing but a catalogue of reversals; everything is in fluctuation and movement; one faction was continually undoing what was established by another; and the multiplied oaths, which each party exacted for the security of their present acts, betray a perpetual consciousness of their instability\*.

*2. Provisions to enforce the attendance of Members of Parliament; Prerogative of the King to create Peers, and grant the right of Parliamentary Representation.*

Stat. 5 Rich. II.  
Stat. 2, c. 4.

An act to secure the regular attendance of persons in parliament was passed in 5 Richard II.<sup>1</sup>, by which all persons and commonalties, who thenceforth had summons of parliament, were to come to the parliament in manner as they were bound to do, and had been accustomed in the kingdom of England of ancient time; and that whomsoever thenceforth had such summons, be he archbishop, bishop, abbot, prior, duke, earl, baron, bannerett, knight of county, citizen of city, burgess of borough, or other singular person or commonalty whatsoever, and should be absent, or should not come on such summons, if he could not reasonably and honourably (honestement) have excuse towards the king, was to be amerced and otherwise punished, according to what had of old time been before used in the kingdom in such case; and if any sheriff was negligent in making returns of the writs of parliament, or should leave out from such returns any cities or boroughs which were bound, and of ancient time used, to come to parliament, he should be punished in the manner accustomed to be done in the case of old time.

Statute refers to  
custom right  
of summons  
of parliament.

This statute refers generally to custom, respecting the temporal, as well as the spiritual lords; and may be considered as tending to give a permanent title to those, whose ancestors had been summoned to parliament by writ, and might thereupon be deemed to have gained a right to like summons by usage; but, in practice, there are many instances of persons summoned to parliament, whose descendants were not so summoned.

Creation of peers  
by patent.

It has been said, that earls were always created by letters patent; but it should be remembered it was the highest official

\* 3 Hume, 34.

<sup>1</sup> Rot. Parl. Richard II. 129. Stat. 2, c. 4.

dignity. The title of duke originated, as previously stated, with Edward III.; Richard II. introduced the rank of marquis by patent, and also created a baron by letters patent, being the first creation of the dignity of baron by patent; and Henry VI. instituted the title of viscount<sup>2</sup>.

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These grants by patent, had the effect of insuring the succession to the dignity, according to its limitations; and confined the title to such heirs as were therein specified.

Succession insured according to the terms of the patent.

From this time, the descendants of all those who were then peers, and not so created by letters patent, could claim the dignity by prescription, if summoned by a general writ; and the apprehension that such would be the effect of a general writ, led, as in the case of Baron Vesey, to a specification in the writ of summons of the special heirs, to whom it was the king's intention the dignity should descend.

The abbots and priors insisted that holding by barony alone, was not a sufficient ground for requiring their attendance in parliament; and that such only were bound to attend, as not only held by barony, but whose predecessors had been accustomed to attend; thus referring their attendance to ancient custom<sup>3</sup>.

Attendance of abbots and priors in parliament influenced by usage.

Usage is equally applied to counties, cities, and boroughs, as to the lords spiritual and temporal; and this statute, combined with that of 15 Edward II., gave a more fixed character to the legislative body.

Usage applied to counties and boroughs.

Preserving to the archbishops, bishops, abbots, and priors, accustomed to be summoned to parliament, their dignities; to the temporal peers, then in possession of the dignity, hereditary titles, qualified wherever the title had been qualified by its original and known creation, and in other cases descendible to all the heirs of the body of the then peer, or of his ancestor first summoned, and under whom he claimed his dignity; and to the counties, cities, and boroughs, which then sent members of parliament, it also confirmed their rights of representation: but applying to the rights and obligations of all, "usage," as the evidence of those rights and obligations<sup>4</sup>.

Fixed character given to the legislative body.

<sup>2</sup> Selden's Titles of Honor, 630. 2 Dugdale's Baronage, 54. 10 Henry, 54.

<sup>3</sup> Selden's Titles of Honor, 617, 618. 8 Henry, 160.

<sup>4</sup> The House of Lords, in the first Parliament of Richard II., consisted of the archbishops and bishops, twenty-two abbots, and two priors, one duke, thirteen earls, forty-seven barons, twelve judges and privy councillors. Dugdale's Summons, 299. 8 Henry, 154.



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Prerogative of the king to erect bishoprics, and to increase the number of the commons.

But the statute must be considered as having left open to the sovereign, the erection of new bishoprics with the dignity of lord of parliament annexed, or of founding abbeys and priories with the addition of the like dignity, or the grant of the dignity to abbots and priors of more early foundation, together with the creation of peers, with new or ancient names of dignity, and with general or special limitations; and also the power of giving to other counties, cities, and boroughs, the right of sending representatives to parliament: in fact, all these powers were subsequently exercised by the king alone, as well as with the concurrence of the lords and commons in parliament.

James I. assumed also the power of granting the right of representation to the two universities of Oxford and Cambridge; bodies not falling under the description of cities and boroughs as used in this statute, and it is very doubtful whether they can be considered as within the description of the word "communities."

Perpetual right of boroughs send representatives, after having once been required so to do.

The Parliament of 1640 seems to have recognised that the right of boroughs, if once required to send members of parliament, was a perpetual right, incapable of being defeated or lost by non user or otherwise, and writs were issued for the election of members for boroughs which, before 5 Richard II., had ceased to send members of parliament; but this was only acted upon partially.

Case of Lord Frescheville.

The House of Lords, on the contrary, in the case of Lord Frescheville, seems to have considered a writ of summons in the reign of Edward I., without any subsequent writ, as not having created, of itself, a prescriptive title to hereditary succession.

### 3. *Pecuniary Impositions.*

Privy council summon an assembly to obtain pecuniary resources.

Although Edward III. had claimed an arbitrary right to levy taxes in cases of public necessity or danger, it was repudiated in 2 Richard II.; for, when the realm was in imminent danger of invasion, the privy council convoked an assembly of peers and other great men, probably with a view to avoid the summoning of a parliament. This assembly lent their own money, but declared that they could not provide a remedy without charging the commons, which could not be done out

of parliament, advising that one should be speedily summoned<sup>1</sup>.

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In 11 Richard II. complaint was made in parliament<sup>2</sup> of impositions on the clergy of the kingdom by the pope, praying the king to provide remedy against such exactions; and in the same parliament it was granted by the king, that nothing should be levied or paid in burden or damage of the kingdom; and an imposition having been, notwithstanding, made by the pope on the clergy, and levied by authority of the archbishops upon their suffragans, without the common council and assent of the kingdom, writs were directed to the persons employed for the purpose, to forbear levying such impositions.

Exactions by the pope.

These proceedings declare that, according to the constitution of the government, no imposition could be made on the people of England, without the common council and assent of the kingdom; and that the king was advised that, there existed no other power besides parliament, by which any such imposition could be made: and though his grandfather had acted in derogation of this general right, Richard II. always had recourse to parliament to authorize any pecuniary imposition on the people.

No tax can be levied without universal consent.

The clergy made frequent, but unsuccessful, attempts to separate themselves from the laity, and, as a distinct estate of the realm, to have a negative on all the proceeding in parliament, and thus to place the separate conventions of the clergy as a control on the lords and commons<sup>3</sup>: but the assent of the clergy, as a body, was not essential to any statute or ordinance; because they had seats in parliament, only in respect of their temporal estates; and the several statutes made, controlling the power of the see of Rome, were generally enacted, not only without the assent of the prelates, but, in some instances notwithstanding their express refusal to give such assent, and their declaration that, giving such assent, would have been in breach of their oaths of obedience to the see of Rome<sup>4</sup>.

Attempts by the clergy to separate themselves from the laity.

Assent of clergy not requisite for the enactment of laws.

The deposition of the king occurred at a time, when everything seemed to contribute to his support, in the exercise of that arbitrary power which he had assumed. Those whom he had reason to fear, were removed either by violent death

Deposition of the king occurred, when everything appeared to contribute to his support.

<sup>1</sup> 2 Hallam's Const. Hist. 27.

<sup>2</sup> Rot. Parl. Richard II. 405.

<sup>3</sup> Ibid. 348.

<sup>4</sup> 1 Rep. Dig. Peer. passim 335—347.

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or banishment, and others were secured in his interest by places or favours at court. The great offices of the crown, and the magistracy of the whole kingdom, were put into such hands as were fit for his designs; besides which, he had a packed and servile parliament <sup>5</sup>.

But the same spirit of liberty which had been so slow to act under so many provocations, acted with the greatest vigour when it was least expected.

Events which  
led to the deposi-  
tion of the king.

The armies would not fight for the king against their country; some of his ministers were hanged, particularly those who had been the great instruments of taxing and oppressing the people; and the king, in his distress, saw himself forsaken by those, whom *he* should have forsaken before; the very men who had so much flattered him with their excessive love and loyalty, and, like those mean insects which live with a little warmth, but shrink at any change of weather; they, who had contributed to all his errors in prosperity, transplanted their zeal into the new sunshine, as soon as his successor demanded the crown.

<sup>5</sup> Bolingbroke's Hist. Eng. 64.

## CHAPTER IV.

## THE LINE OF LANCASTER.

A.D. 1399—1461.

HENRY IV.—HENRY V.—HENRY VI.

## SECTION I.

HENRY IV., September 29, A. D. 1399,—March 20, A. D. 1413.

- |                                         |  |                                                                |
|-----------------------------------------|--|----------------------------------------------------------------|
| 1. The Title of Henry IV. to the Crown. |  | 2. The Constitutional Rights of the Lords and Commons defined. |
| 3. General Legislative Enactments.      |  |                                                                |

1. *The Title of Henry IV. to the Crown.*

WILLIAM II. and Henry I. had obtained the throne in prejudice of the claims of their elder brother Robert; Stephen had been advanced to the same dignity, contrary to every opinion of hereditary succession; John had been crowned in opposition to the claims of Arthur, the son of his elder brother; but from that time, during a period of two hundred years, the opinion of hereditary right to the throne had been preserved without interruption.

For although Edward III. had been invested with the royal power in the lifetime of his deposed father; it was in the character of apparent heir of that father; and his grandson, Richard II., at a very early age, had succeeded his grandfather, before whose death the people and the parliament had shown an anxiety to obtain a recognition of the title of Richard to the succession, as the representative of his father.

But Henry IV. obtained the crown, evidently against the prevailing opinion of hereditary right, to the prejudice of the claims of the Earl of March, the grandson of Lionel, the elder brother of John of Gaunt, father of Henry; and the right of the Earl of March, as presumptive heir to the crown, had been acknowledged by Richard.

The title of Henry IV., though he sometimes affected to derive it through a different channel, depended wholly on the authority of the lords and commons, summoned in the name of Richard to attend his parliament, in which the three

HENRY IV.  
1399—1413.

Edward III. invested with the royal power, as apparent heir to his father.

Title of Henry IV. derived from parliament

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estates of the realm exercised the authority to depose their king, and to place another on the throne. These acts of power, notwithstanding the preceding struggles, and in some degree the violence of the deposition, had a considerable effect on the minds of the people, by raising in their estimation the power and authority of parliament; and also tended to impress on the king, the degree of his dependance on that assembly, as being the origin and support of his regal authority.

The effects of  
faction.

Faction, as it oppresses the whole community, if it succeeds; so it often draws oppression, not only on itself alone, but on the whole community, when it fails.

Henry IV. supported his title by military authority.

The attempts to dethrone Henry IV.<sup>1</sup> was a justification to support himself by a military force; and was an excuse, in the minds of many, for governing with a severe hand; for doing several illegal and tyrannical actions; for invading the privileges of parliament, at least, in the point of elections; and for obtaining, by these means, frequent and heavy taxes from the people; for all this might appear the harder, because it happened in the reign of a king, who had no title to the crown but the good will of the people, and the free gift of parliament; so it might appear, on the other hand, less grievous, because some part of it was rendered necessary by the opposition, which a faction made to a parliamentary establishment; and because the rest of it was represented, under that umbrage, to be so likewise, by the court logic of that age<sup>2</sup>.

Richard adjudged to perpetual imprisonment.

The king, shortly after his accession, came to the parliament; and there, by assent of the lords spiritual and temporal, Richard, late king of England, was adjudged to perpetual imprisonment, to remain secretly in safe guard<sup>3</sup>.

To this proceeding the commons were not parties, but they shortly afterwards shewed to the king, that as the judgments of parliament belonged solely to the king and the lords, and not to the commons, unless the king pleased of his special grace, to shew them such judgments for their ease, that no record should be made in parliament concerning the said commons, that they were or should be parties to any judgment given or to be given in parliament.

<sup>1</sup> Walsing. 362—368. Otterbourne, 244. Ypod. Neust. 556, 560. Hall, fol. 21, 22, et seq. 8 Rymer, 313—338. Harl. MSS. 42, fol. 152. 3 Hume, 63, 70. 3 Lingard, 279—303.

<sup>2</sup> Bolingbroke, Hist. Eng. 66.

<sup>3</sup> Rot. Parl. Hen. IV. 426, 427. 3 Lingard, 278.

To this it was answered by the Archbishop of Canterbury, by command of the king, that the commons were petitioners and demanders, and that the king and the lords, of all time, had had, and ought to have, of right, the judgments in parliament, in manner as the commons had shewn; save that in a statute to be made, or in grants and subsidies, or such things to be done for the common profit of the realm, the king would have especially their advice and assent; and this order of proceeding should be holden and kept in all time to come.

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Disclaimer by  
the commons of  
judicial power.

The commons, in the convention of the estates, had concurred in the judgment of deposition against Richard; but the judgment of perpetual imprisonment against him, was not a legal consequence of that judgment, nor was it in any manner a judgment of law, but a mere ordinance of policy; it therefore ought to have been by statute; but the commons *disclaimed* the right of exercising judicial powers.

Convention of  
the three estates,  
in the judgment  
of deposition.

## 2. *The Constitutional Rights of the Lords and Commons defined.*

The king being obliged to conciliate the nation, the commons, aware of their importance, assumed powers, which had never been exercised by their predecessors.

Assumption of  
authority by the  
commons.

In the first year they procured a law, that no judge, in concurring with any iniquitous measure, should be excused by pleading the orders of the king, or even the danger of his own life from the menaces of the sovereign<sup>1</sup>.

No judge to plead  
the orders of the  
king for an illegal  
act.

The reasonableness and expediency of this measure are very manifest; it being the indispensable duty of a good minister to dissuade his master from all illegal measures, or, if he cannot prevail, to quit his service, rather than suffer himself to be made the instrument of them; and if the commands of the prince were to be allowed a sufficient justification, the prerogative of doing no wrong, would be extended to ministers, and nobody would be left accountable for mal-administration.

In 2 Henry IV., the commons claimed a right of not granting any supply before they received an answer to their petitions; which was a tacit manner of bargaining with the crown<sup>2</sup>.

Refusal of sup-  
plies until peti-  
tions were an-  
swered.

They also inserted in their pecuniary grants, that the king

<sup>1</sup> Cotton, 364. 3 Hume, 78.

<sup>2</sup> Cotton, 406. 3 Rot. Parl. 458. 3 Lingard, 322.

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could not lawfully raise such aids, without the consent of the lords and commons<sup>3</sup>: and, in consequence, no precedents for arbitrary taxation of exports or imports occur from the accession of Richard II. to the reign of Mary<sup>4</sup>.

Removal of  
household offi-  
cers.

In the fifth year they desired the king to remove from his household four persons, who had displeased them, among whom was his own confessor; and Henry, though he told them that, he knew of no offence which these men had committed, yet, in order to gratify them, complied with their request<sup>5</sup>.

Treasurers ap-  
pointed to re-  
ceive supplies.

In 6 Henry IV., the house voted supplies to the crown, but appointed treasurers of their own, to see the money disbursed for the purposes intended, and required them to deliver in their accounts to the house<sup>6</sup>; and from that period, the supply was generally appropriated to specific purposes, excepting a certain sum for the absolute disposal of the crown; a custom which first originated during the minority of Richard II. The privilege of freedom of debate, of verbally presenting their petitions<sup>7</sup>, and exemption from arrest or imprisonment<sup>8</sup>, were also recognised in this reign.

Articles regu-  
lating the go-  
vernment and  
household.

In 8 Henry IV., the commons proposed, for the regulation of the government and household, thirty important articles, which were all agreed to; and they even obliged all the members of council, all the judges, and all the officers of the household, to swear to the observance of them<sup>9</sup>.

The increased authority of the commons arose from the domestic difficulties of the crown; but when the kingdom became more settled, he repulsed their aggressions;—thus, when the speaker made his customary application for “liberty of speech,” the king told him, “he would have no novelties introduced, and would enjoy his prerogatives<sup>10</sup>.”

Inviolability of  
church property  
maintained.

The king, however, in danger and prosperity maintained the inviolability of church property, thus;—the commons, in the sixth year of this reign, when required to grant supplies, proposed that the crown should seize all the temporalities of the church, and employ them as a perpetual fund to serve the exigencies of the state; but Henry discouraged their application<sup>11</sup>,

<sup>3</sup> 3 Rot. Parl. 493. 3 Hume, 78.      <sup>4</sup> 2 Howell's State Trials, 443, 507.

<sup>5</sup> Cotton, 426. 3 Rot. Parl. 523, 527. 3 Hume, 78.

<sup>6</sup> Cotton, 438. 3 Rot. Parl. 523, 529.      <sup>7</sup> 3 Rot. Parl. 540, 542.

<sup>8</sup> Ibid. 456, 523, 573.      <sup>9</sup> Cotton, 456, 457.

<sup>10</sup> 3 Rot. Parl. 648. 3 Lingard, 320, 321. 3 Hume, 78. .

<sup>11</sup> Walsing. 371. Ypod. Neust. 563.

and when in the eleventh year they made a similar, but more "zealous" proposition, he gave them a severe reproof<sup>12</sup>.

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1399—1413.

Commons treated  
as "procuratores  
et attorneyi."

In 7 and 8 Henry IV.<sup>13</sup>, the settlement of the succession to the crown, was ordered to be exemplified under the great seal, and according to the language of this instrument, the knights, citizens, and burgesses, assembled in parliament, were then considered as "procuratores et attorneyi" of all the counties, cities, and boroughs, and of the whole people of the kingdom, "per universitates et communitates" of the same counties, cities, and boroughs, and by the whole people of the same, lawfully constituted, according to the style, manner, and observance of the kingdom.

Therefore, by the usage of the kingdom, the knights, citizens, and burgesses, as then elected and returned, though elected and returned only by some, were to be considered as in effect procurators and attorneys for the whole, and had power to act for the whole; and that for this purpose they were assembled before the king, and before the prelates, and the lords, and all who, according to usage, ought to attend the parliament.

Enactments were likewise made, respecting the election of knights of the shire, by which it was provided that at the next county to be holden after delivery of the writ to the sheriff, proclamation should be made, in full county, of the day and place of the parliament; and that all those who should be then present, as well suitors duly summoned for any cause as others, should attend the election of their knights for the parliament, and then in county should go to the election, freely and indifferently, notwithstanding any prayer or command to the contrary; and after the knights should be elected, whether absent or present, their names should be written in an indenture, under the seals of all those who should elect them, and annexed to the parliament writ; which indenture, so sealed and annexed, should be deemed the return of the writ as to the knights of the counties. And that in writs of the parliament in future should be inserted this clause,—"*Et electionem tuam in pleno comitatu tuo factam, distincte et aperte, sub sigillo tuo, et sigillis eorum qui electioni illi interfuerint, nobis in cancellaria nostra, ad diem et locum in brevi content, certifices indilate*"<sup>14</sup>."

Election of  
knights of the  
shire.  
Stat. 7 Henry IV.  
c. 15.

<sup>12</sup> Walsing. 379. 8 Rymer, 627. Otterbourne, 267.

<sup>13</sup> 3 Rot. Parl. 574, 575. <sup>14</sup> Stat. 7 Henry IV. c. 15; 4 Inst. 10, 48.



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Stat. 11 Hen. IV.  
c. 1.

Object of these  
statutes.

Peers assumed  
the character of  
one of the estates  
of the realm, on  
the deposition of  
Richard II.

Members of par-  
liament treated  
as the represen-  
tatives of all the  
commons of the  
realm.

It was likewise enacted that a sheriff making a false return, or acting in opposition to Stat. 7 Henry IV. c. 15, was subjected to a fine of one hundred pounds, and the judges of assize were empowered to inquire into such offences, and to pass sentence on the delinquents<sup>15</sup>.

These statutes were intended to settle the manner of election of knights for those counties, which then sent members of parliament, and to ascertain the persons who were to elect those knights, because, from the mode of election which had hitherto prevailed, much depended on the partiality of the sheriff, who being appointed by the court, seldom hesitated to make an undue return, when requested by the government, and which had caused frequent remonstrances. Another equally cogent motive was, that, in many preceding parliaments, the commons, by their petitions, had desired a parliamentary declaration, by whom the wages of knights of the shires were to be paid; but to these petitions of the commons, answers were given referring only to usage; and from some of these petitions it appeared, the peers had insisted that, their tenants being represented by them, were exempted from that charge.

In the proceedings on the deposition of Richard II., the peers assumed the character of one of the estates of the realm, all the rest of the laity, comprehending the tenants of those peers, being considered as forming another and distinct estate; and this third estate was evidently considered in the proceedings on the deposition of Richard, not as represented in any part, by the temporal lords, who formed the second estate, but as represented in the whole by the representatives of the commons in parliament; and in the description of the parliament, in the exemplifications of the acts of settlement of the crown, in 7 Henry IV., and indeed throughout the whole of the reign of Henry IV., the elected knights, citizens, and burgesses in parliament, were treated as the representatives of all the commons of the realm, forming the distinct third estate; the temporal lords appearing only on their own behalf as the second estate, of which they were the only members<sup>16</sup>.

<sup>15</sup> 3 Rot. Parl. 601. Stat. 11 Henry IV. c. 1. 3 Lingard, 317, 318.

<sup>16</sup> Whitelock has asserted (2 Whitelocke, Parl. Writ, 43,) that the "three estates are king, lords, and commons;" but this position cannot be supported by the ancient records and law books (3 Hallam's Middle Ages, 158). "This laud standeth," says the Chancellor Stillington, in 7 Edward IV.,

Thus gradually the constitution of the legislature became formed as at present. The representative system by elections for counties, cities, and boroughs, was gradually introduced, indebted for its origin to the pecuniary necessities of the crown, as it could obtain more from them by such a mode, than by a reasonable tallage; and finally established by usage rather than by positive law. No definitive enactment having been previously made, declaring who should be the persons represented<sup>17</sup>, and who should be the electors of the knights of the shires, till Stat. 7 Henry IV.

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Stat. 7 Hen. IV.  
c. 15, first defined the electors of members of parliament.

The two houses of parliament were not accustomed, previous to this period, to consider their respective rights and privileges with that jealousy, which they have subsequently done.

In the parliament which assembled at Gloucester in 9 Henry IV., the commons prayed the king that certain lords, whom they named, might be assigned to commune with them of certain matters, for the common profit of the whole kingdom; a request which had been made on previous occasions, and which the king granted; but the commons henceforth availed themselves of every opportunity to claim peculiar privileges, particularly respecting pecuniary grants to the crown.

Rights and privileges of the two houses of parliament.

The king had assembled the lords spiritual and temporal in his presence, and they were required to state what aid they conceived necessary for the public service.

The lords advise the king, as to the amount of public aids.

To this the lords answered, that less would not suffice than a tenth and a half of cities and boroughs, and a fifteenth and a half of other laymen, and a grant of the subsidy of wool, leather, and woollfells, and other duties for two years.

"by three states, and above that one principal, that is to wit, lords spiritual, lords temporal, and commons, and over that, state royal, as our sovereign lord the king." (5 Rot. Parl. 622.) Thus, too, it is declared that the treaty of Staples, in 1492, was to be confirmed "*per tres status regni Angliæ rite et debite convocatos, videlicet per prelatos et clericum, nobiles, et communitates ejusdem regni.*" (12 Rymer, 508.)

The only authority which can be cited for Whitelocke, is in 2 Henry IV., where the commons say, that the states of the realm may be compared to a trinity, that is, the king, the lords spiritual and temporal, and the commons. (3 Rot. Parl. 459.) This passage only proves that by estates of the realm, was meant members, or necessary parts of the parliament. The error has originated from an inattention to the primary sense of the word "*status*," which means an order or condition into which men are classed by the institutions of society. It is only in a secondary or rather an elliptical application, that it can be referred to their representatives in parliament or national councils.

<sup>17</sup> 1 Rep. Dig. Peer. 357.

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By command of the king, a message was sent to the commons, to send to the king and the lords a certain number of their fellows, to hear and report to their fellows what they should have in command from the king. The commons sent twelve of their members, to whom the question put to the lords, and the answer given by the lords, were delivered; which answer the king willed they should report to their fellows.

Commons claim  
the right to ori-  
ginate taxation.

The report being made to the commons, they affirmed the proceeding to be in prejudice and derogation of their liberties: thus claiming, as the representatives of the people at large, that all grants of aids must proceed first from them, and could not originate with the lords; an assertion inconsistent with the frame of such an assembly, as was required by the Charter of John, and inconsistent with many proceedings in the reign of Henry III., and particularly in the assembly, whose answer to the king produced the parliament of Oxford, in the forty-second of that reign.

Declaration of  
the king, defi-  
ning the rights  
of the crown  
and houses of  
parliament.

The king, as it is stated on the Roll, hearing of the transaction in the commons, and willing that nothing should be done then, or in future, which might any way turn against the liberty of the estate, for which they were come to the parliament, nor against the liberties of the lords; willed, and granted, and declared, that it should be lawful for the lords to commune amongst themselves in that parliament, and in every other in time to come, in absence of the king, of the state of the realm, and of the remedy necessary for the same;—and that in like manner, it should be lawful for the commons, on their part, to commune together of the state and remedy aforesaid:—provided always, that the lords, on their part, and the commons on their part, should not make any report to the king, of any grant, by the commons granted, and by the lords assented to, nor of the communications of the said grant, before the lords and commons should be of one assent and accord in such matters; and then in manner and form as had been accustomed; that is, by the mouth of the speaker of the commons.

Lords to com-  
mune amongst  
themselves in  
parliament.

Commons to  
commune toge-  
ther.

The king willing, moreover, by assent of the lords, that the communication made in that parliament, as before stated, should not be drawn into example in time to come, nor turn to the prejudice or derogation of the liberty of the estate for which the commons were then come; neither in that par-

liament, nor in any other in time to come; but he willed that himself, and all the other estates, should be as free as they were before<sup>18</sup>.

This declaration on the part of the crown, seems to have placed the king, and the two houses of parliament, in that separate and independent situation in which they are now respectively situated.

Not indeed as a novelty, but as a solemn declaration in parliament of what had been before accustomed, although proceedings of a contrary tendency might have taken place in former parliaments:—and this declaration in parliament, with Stat. 15 Edward II., and the statute passed in this parliament declaring, who should be the electors of the knights of the shires, and the repeated declarations in this and preceding parliaments of Henry IV., that the House of Commons as then constituted, was the representative of the third estate, including all the laity of the kingdom, except the lords temporal, and that the lords temporal by themselves were a distinct estate of the realm, appearing personally in parliament, seem to have completely settled, what was in future to be deemed the true constitution of the legislature of the kingdom, especially, with respect to the important point of grants of aid to the king, and with respect to the separate and distinct offices and duties of the two houses of parliament, and their respective separate and independent proceedings, and also the relation, which the king was to bear to the two houses of parliament respectively, except only as the privileges claimed by the clergy may have interfered.

HENRY IV.  
1399—1413.

The House of Commons recognized, as the representative of the third estate.

### 3. *General Legislative Enactments.*

Several important statutes were passed:—one confined the guilt of treason to the offences enumerated in the celebrated act of Edward III.<sup>1</sup>; another abolished appeals of treason in parliament, and sent the accuser to the established courts of law<sup>2</sup>; a third declared that the authority of parliament should never more be delegated to a committee of lords and commons<sup>3</sup>; and a fourth<sup>4</sup> forbade, under the heaviest penalties, any person besides the king to give liveries to his retainers.

Stat. 1 Hen. IV. c. 10.

Stat. 1 Hen. IV. c. 14.

Stat. 1 Hen. IV. c. 7.

Stat. 2 Hen. IV. c. 21.

<sup>18</sup> 3 Rot. Parl. 427.

<sup>2</sup> Ibid. c. 14; vide ante 111.

<sup>1</sup> Stat. 1 Henry IV. c. 10.

<sup>3</sup> 3 Lingard, 277, 278.

<sup>4</sup> Stat. 1 Henry IV. c. 7. Stat. 2 Henry IV. c. 21.

## SECTION II.

HENRY V., March 20, A. D. 1413,—August 31, A. D. 1422.

1. Persons to be chosen and choosers of Knights and Burgesses to serve in Parliament.
  2. Illegal Taxes not levied by the House of Lancaster.
1. *Persons to be chosen, and choosers of Knights and Burgesses to serve in Parliament.*

HENRY V.  
1413—1422.

In the short, but triumphant government of Henry V., the spirit of faction was awed, and the spirit of liberty had no occasion of exerting itself; at least with struggle, or in any signal manner, under a prince, just, moderate, and pious, according to the religion of those times<sup>1</sup>.

Stat. 1 Hen. V.  
c. 1.

This reign was productive of an important statute<sup>2</sup>, as to the classes of people who should be chosen, and should be choosers of the knights and burgesses to serve in parliament, by which the *knights of the shires* were not to be chosen, unless *resident* within their shires, and the knights, esquires, and others, *choosers* of such knights of the shires, were also to be *resident* within their shires.

The “citizens” and “burgesses,” of the cities and boroughs were to be chosen from men, citizens and burgesses *resident, dwelling, and free*, in the same cities and boroughs, and none other in any wise<sup>3</sup>.

Doctrine of residency supported by the Saxon and common law.

The general doctrine of “residence” is thus applied to the persons who were to vote in the shires, as the “inhabitants of the county:” and likewise to the boroughs, the burgesses of which were *resident*, and in that character would be suitors of the court leet:—they were to be “dwelling,” and so would be “householders,” and would pay *scot and lot*: they were also to be of “*free*” condition, and therefore would be sworn and enrolled at the court leet; and would be free and lawful men of the place, where they were enrolled and dwelt; and as that was a borough, they would be burgesses: and this construction of the statute is supported by the Saxon laws,—the common law,—and all the legal and municipal records up to this period.

<sup>1</sup> Bolingbroke, Hist. Eng. 68.<sup>2</sup> Stat. 1 Henry V. c. 1.

<sup>3</sup> This statute is an isolated instance, wherein the House of Commons and the court of King's Bench, usurped the power of declaring it unfit to be observed, when it was unrepealed by any enactment, upon the principle of desuetude, a doctrine which cannot be too severely reprobated (vide 1 Peck, note D 53. Stat. 11 Geo. III. c. 58).

Importance has been attached to the hypothesis, that members for the boroughs have been stated to be returned at the county courts, and from whence it has been inferred, that the elections were there also:—but tho. elections were always made in the boroughs, with the assent of the inhabitant householders, and if any of the electors apprehended political treachery, then they personally presented the return to the sheriff, while he was presiding in the county court<sup>4</sup>.

HENRY V.  
1413—1422.

Return of members at the county court.

## 2. *Illegal Taxes not levied by the House of Lancaster.*

With respect to the imposition of taxes, none of the princes of the House of Lancaster, ventured to impose taxes without consent of parliament: their doubtful or bad title became so far of advantage to the constitution:—because the rule thus became fixed, and could not safely be broken afterwards, even by more absolute princes<sup>5</sup>.

### SECTION III.

HENRY VI., August 31, A. D. 1422,—March 4, A. D. 1461.

- |                                           |  |                              |
|-------------------------------------------|--|------------------------------|
| 1. National Disorders.                    |  | mons, and improper conduct   |
| 2. Power of the King to appoint a Regent. |  | of the Sheriffs in making    |
| 3. Rising Importance of the Com-          |  | their Parliamentary Returns. |
|                                           |  | 4. Borough Institutions.     |

## 1. *National Disorders.*

The spirit of faction which prevailed in the reign of Henry VI., the loss of all the provinces in France<sup>1</sup>, the discontent which followed<sup>2</sup>, and the claims of hereditary right, in opposition to the parliamentary title of the House of Lancaster<sup>3</sup>; were productive of disorder in every part of the government<sup>4</sup>.

HENRY VI.  
1422—1461.

Prevalence of national discord.

The commons had it much in their power to enforce the execution of the laws; and if a defect was experienced in this

<sup>1</sup> Prynne, 252, 257.

<sup>5</sup> 3 Hume, 122.

<sup>1</sup> 11 Rymer, 158—266. Rot. Parl. Henry VI. 147, et seq. 3 Monstrel. 21, 38. Hall, 161—166. Grafton, 646. Wil. Wyreest. 469. 3 Lingard, 413, 454, 456, 472. 3 Hume, 177, 178.

<sup>2</sup> 5 Rot. Parl. 172—182. Wil. Wyreest. 467—470. 3 Lingard, 457, et seq. 3 Hume, 179, et seq.

<sup>3</sup> Whetham, 485. Wil. Wyreest. 464. Rot. Parl. Henry VI. 375—383. 3 Lingard, 486—492.

<sup>4</sup> 3 Hume, 180, et seq.

HENRY VI.  
1422—1461.

particular, it proceeded less from any exorbitant power of the crown, than from the licentious spirit of the aristocracy, and, perhaps, from the rude education of the age, united with an ignorance of the advantages resulting from a regular administration of justice.

Recognition of  
important consti-  
tutional prin-  
ciples.

Stat. 11 Hen. VI.  
c. 11.

Notwithstanding the violence of rival factions, the commons maintained their rights to vote and appropriate the supplies, the impeachment of obnoxious ministers<sup>5</sup>, the personal security of their members was protected<sup>6</sup>, and to this reign may be ascribed, the recognition of important constitutional principles, and the enactment of several salutary measures<sup>7</sup>.

## 2. *Powers of the King to appoint a Regent.*

The king can  
appoint a regent,  
but cannot pro-  
vide for the go-  
vernment of his  
successor.

It was recognised as a constitutional principle, that though the king, in the case of temporary absence from the realm, might appoint a regent with delegated authority during his absence, yet he could not, without the concurrence of the three estates, provide for the government during the minority of his successor. Thus Henry VI. was but nine months old at his father's death, and although Henry V. had conferred the regency upon the Duke of Gloucester, yet on the twenty-seventh day of the first session of parliament, it is entered upon the roll, that the *king*, "considering his tender age, and inability to direct in person the concerns of his realm, by assent of lords and commons, appoints the Duke of Bedford, or, in his absence beyond sea, the Duke of Gloucester, to be protector and defender of the kingdom and English church, and the king's chief counsellor." This appointment was made during the king's pleasure; sixteen councillors were named in parliament, to assist the protector in his administration: and their concurrence was made necessary to the removal and appointment of officers; and in all important business that was executed by order of council, the whole, or major part, were to be present; "but if it were such matter that the king hath been accustomed to be counselled of, that then the said lords proceed not therein, without the advice of my lords of Bedford or Gloucester<sup>1</sup>."

<sup>5</sup> Hollingshed, 631. Grafton, 607. Hall, 157. 3 Hume, 185. Cotton, 642.

<sup>6</sup> Stat. 11 Henry VI. c. 11, et vide etiam. 3 Rot. Parl. 541, 542.

<sup>7</sup> 3 Lingard, 497—499. 3 Hume, 212, 213. 8 Henry, 68—70.

<sup>1</sup> 4 Rot. Parl. 174, 176.

Another principle was also acknowledged, that whenever the reigning monarch, either through unforeseen absence, extreme youth, or mental disease, was incapable of performing the functions of royalty, the exercise of his authority devolved exclusively on the House of Peers, who appointed the great officers of state, and the members of the council, giving to them powers to transact the ordinary business of government, but resuming those powers, as often as they themselves assembled, either in parliament or in a great council.

This right was exercised upon the accession of Henry III.<sup>2</sup>, Edward I.<sup>3</sup>, Edward III.<sup>4</sup>, Richard II.<sup>5</sup>, and Henry VI.<sup>6</sup>; and its recognition in the reign of the latter sovereign was required from the Dukes of Bedford, Gloucester, and York, who declared that, during the king's minority or incapacity, they were entitled to no more authority than any other peer, unless it were conferred upon them by the whole body.

The House of Peers also exercised exclusive jurisdiction where the succession to the crown was disputed; and when, in this reign, the Duke of York claimed the throne, it was the House of Peers whom he addressed; as it was that house alone, which had authority to decide the question, and the commons never claimed a right to interfere: but, if an act of parliament is required to enforce the judgment of the peers, then the "assent" of the commons must be obtained<sup>7</sup>.

HENRY VI.  
1422—1461.

Incapacity of reigning monarch, how provided for.

House of Lords have exclusive jurisdiction in disputed questions upon the succession to the crown.

### 3. *Rising Importance of the Commons.*

From the rising importance of the commons, knights, citizens, and burgesses, were considered in a different character from that in which they had heretofore been held, and henceforth, political parties adopted any manœuvre which could conciliate their prejudices, so as to make them the servile instruments of their ambitious projects.

The reigns of Richard II. and Henry IV. had shown the dangerous consequences of that influence, which the crown had obtained in the election of members of parliament. The watchful spirit of liberty, or of party, was soon alarmed and provoked during the reign of the three Lancastrian princes, to

Dangerous consequences from the interference of the crown in elections.

<sup>2</sup> Matt. Paris, 243.    <sup>3</sup> Matt. Westmonast. Ap. 2. Brady's Hist. Eng. 1.

<sup>4</sup> 2 Rot. Parl. 52.

<sup>5</sup> 7 Rymer, 171.

<sup>6</sup> 4 Rot. Parl. 169, 326, 453, 5 ib. 242, 409, 411.

<sup>7</sup> Cotton, 666, 666. Grafton, 643—647. Hollingshed, 657. 3 Lingard, 497, 498. 3 Hume, 205—207.



**HENRY VI.**  
**1422—1461.**

The principle under which electors are required to possess a property qualification.

make such regulations about elections, and about the property and other qualifications of the electors and elected, as seemed at that time sufficient to prevent this influence for the future.

The principle under which electors are required to possess a property qualification, is for the purpose of excluding those who, from the meanness of their situation, are esteemed to have no will of their own; it being thought that, if these persons had votes, they would be tempted to dispose of them under some undue influence or other. This would give a great, an artful, or a wealthy man, a larger share in elections than is consistent with general liberty. If it were probable that every man would give his vote freely and without influence of any kind, then, upon the true theory and principles of liberty, every member of the community, however poor, should have a vote in electing those delegates, to whose charge is committed the disposal of his property, his liberty, and his life.

But since that can hardly be expected in persons of indigent fortunes, or such as are under the immediate dominion of others, all popular states have been obliged to establish certain qualifications; whereby some, who are suspected to have no will of their own, are excluded from voting, in order to set other individuals, whose wills may be supposed independent, more thoroughly upon a level with each other.

The methods of voting, by centuries or by tribes, among the Romans.

This constitution of suffrages has always been framed in England upon a wiser principle than either of the methods of voting, by centuries or by tribes, among the Romans. In the method of centuries, instituted by Servius Tullius, it was principally property, and not numbers, that turned the scale; in the method by tribes, gradually introduced by the tribunes of the people, numbers only were regarded, and property entirely overlooked. Hence the laws passed by the former method had usually too great a tendency to aggrandize the patricians, or rich nobles; and those of the latter had too much of a levelling principle<sup>1</sup>.

Regulation for the choosers of knights of the shire.

Stat. 8 Hen. VI. c. 7.

- In the eighth year of this reign a statute was passed for the regulation of the choosers of knights of the shire, which recited<sup>2</sup>, “that the elections of knights of shires to come to parliament in many counties of the realm of England, had of late been made by very great, outrageous, and excessive

<sup>1</sup> 1 Black. Com. 171, 172.

<sup>2</sup> Stat. 8 Henry VI. c. 7.

number of people dwelling within the same counties, of the which most part was of people of small substance, and of no value, whereof every of them pretended a voice equivalent, as to such elections to be made, with the most worthy knights and esquires dwelling within the same counties, whereby manslaughterers, riots, batteries, and divisions among the gentlemen, and other people of the same counties shall very likely rise and be, unless convenient and due remedy was provided;" and therefore it was enacted, "that the 'knights of the shires' should be chosen in every county, by people dwelling and resident in the same counties, whereof every one of them should have free land or tenement to the value of 40s. by the year, at the least, *above all charges*; and that they, which should be so chosen, should be dwelling and resident within the same counties, and such as had the greatest number of them, that might expend 40s. by the year or above, as afore is said, should be returned, by the sheriff of every county, knights of the Parliament."

HENRY VI.  
1422—1461.

Knights to be chosen by those who have free land or tenement of forty shillings per annum.

And by a statute in 10 Henry VI., it was required that the choosers of knights for parliament should be people dwelling and resident in the counties, whereof every one should have freehold to the value of 40s. by the year at least, above all charges.

Stat. 10 Hen. VI. c. 2.

The effect of these statutes was an infringement on the constitution, by disfranchising all those freemen who were not "freeholders," &c., while they gave no right to freeholders of 40s. per annum, which they did not previously possess as householders. From the preamble of the former statute, it appears that the alteration was proposed, not in consequence of any disturbances that had arisen, but for the purpose of preventing those, which "shall very likely rise and be."

Object of Stat. 8 Hen. VI. c. 7, and 10 Hen. VI. c. 2.

The general class of voters is again distinctly defined to be, "people dwelling and resident within the county;" and the same would have been the description of the voters, if they had been living in a borough, namely, the residents in each of the cases owing suit to the king's court in the county—*i. e.*, the sheriff's tourn—and in the borough to the leet, because, as there is no special provision of the law either way, the general law would be supposed to have prevailed in both; by which means they would have been on the same footing, differing only in this respect, that while the one was confined to the borough, the other extended over the whole county.

General class of voters defined.

# HENRY VI. 1422—1461.

Principles of the Saxon and common law unimpaired.

Decrease of members of parliament.

The causes to which it may be ascribed.

Parliamentary franchise regarded as an onerous burden.

Refusal of burgesses to attend their parliamentary duties.

It appears by the year-books and statutes at the period when these enactments were made, that the principles of the Saxon and common law were continued, the distinction between villainage and freedom recognised, and the tourn and leet in universal practice.

Although two hundred citizens and burgesses sat in the parliament of 23 Edward I., yet in the reigns of Edward III. and his three successors, about ninety places, upon an average, only returned members<sup>3</sup>.

This decrease may be ascribed to two causes, the disinclination of the burgesses to be represented, and the corrupt conduct of the sheriffs.

Every city and borough were obliged to elect representatives out of its own constituency, who were resident among themselves, as being the best acquainted with their local grievances, and had also to contribute to their expenses.

As neither the boroughs nor their representatives then participated in "political jobs," the parliamentary franchise was regarded as an onerous burden, and when the burgesses could neither bribe nor cajole the sheriff into omitting to send his writ, they then refused to make a return; a refusal which was not attended with punishment, as the government were utterly indifferent to such defaults, provided the borough contributed its share of taxation. Thus, in 1368, Edward III., in a charter, after reciting that the good men and commonalty of *Torrington*, Devon, had, through the *malicious* return of the sheriff, sent two burgesses to parliament from the twenty-first of his reign; and that, in consequence of such a burden, they had been greatly impoverished; granted, that for the future they should be exempted from returning any burgesses to parliament<sup>4</sup>: and Richard II. gave to Colchester a similar indulgence for five years, because they had fortified their town<sup>5</sup>.

In some instances the burgesses, when elected, refused to attend their parliamentary duties; and it ultimately became requisite that the sheriff should take sureties for their appearance, whose names, down to the end of the fifteenth century, were indorsed upon the writ along with those of the elected<sup>6</sup>.

<sup>3</sup> 3 Prynne, 224, et seq. 3 Willis, Not. Parl., 96, et seq.

<sup>4</sup> Rot. Pat. 42 Edward III. p. 1, n. 8. M. and S. Hist. Boroughs, 675.

<sup>5</sup> 3 Prynne, 241. M. and S. Hist. Boroughs, 749.

<sup>6</sup> 1 Laders, 15. 3 Prynne, 252.

The parliamentary writ to the sheriff, required him to cause two knights to be elected out of the body of the county, two citizens from every city, and two burgesses from every borough: but negligence and political depravity alone dictated the execution of these duties.

HENRY VI.  
1422—1461.

Depravity of the  
sheriffs.

Some authors have imagined [that, the sheriff had a discretionary power to determine which boroughs should exercise the parliamentary franchise; but the terms of the writ were imperative, and under it he was exclusively compelled to send a precept to every place within his county, that exercised a local and exclusive jurisdiction apart from the county<sup>7</sup>.

Sheriffs had no  
discretionary  
power to  
select those  
boroughs which  
should return  
representatives.

Sheriffs were in the habit of omitting boroughs which had been recently represented, and indorsing upon the writ a wilful falsehood. Thus, in 12 Edward III., the sheriff of Wiltshire, after returning two citizens for Salisbury, and the burgesses for two boroughs, concludes, "there are no other cities or boroughs within my bailiwick,"—yet eight other boroughs had sent members to preceding parliaments. In 6 Edward II., the sheriff of Bucks declared that, he had no borough within his county except Wycomb; though Wendover, Agmondesham, and Marlow, had twice made returns since that king's accession<sup>8</sup>.

Omission of  
boroughs by  
sheriffs.

Poverty was taken as an excuse for not returning parliamentary representatives. Thus, in 6 Edward II., the sheriff of Northumberland returns to the writ of summons, that all his knights are not sufficient to protect the county; and in 1 Edward III., that they were too much ravaged by their enemies to send any members of parliament<sup>9</sup>. The sheriffs of Lancashire, after making several returns, that no boroughs existed within the county, though Wigan, Liverpool, and Preston were such, subsequently alledged, that none ought to be called upon to return representatives on account of their poverty. This return was constantly made from 36 Edward III. to the reign of Henry VI.<sup>10</sup>

Poverty an ex-  
cuse for non-  
representation.

Although the sheriff was punishable for such conduct<sup>11</sup>, it

Sheriffs seldom  
punished for  
their corruption.

<sup>7</sup> M. and S. Hist. Boroughs, 1930—1938.

<sup>8</sup> Ibid. 494. Brady on Boroughs, 110. 3 Prynne, 231. 3 Hallam's Middle Ages, 169.

<sup>9</sup> 3 Prynne, 165.

<sup>10</sup> 4 Prynne, 317. 3 Hallam's Middle Ages, 171. M. and S. Hist. Boroughs, 494 in loc. passim.

<sup>11</sup> Stat. 11 Henry IV. c. 1; 6 Henry VI. c. 4; 8 Henry VI. c. 7; 23 Henry VI. c. 14.

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was rarely inflicted, because the House of Commons had not then the cognizance of disputed elections, having no power to issue process or examine witnesses; and upon a false return by the sheriff, there was no effective remedy but through the king or his council<sup>12</sup>, and who, upon many occasions, were the actual culprits<sup>13</sup>; in fact, although these frauds were the theme of reprobation, there are only six instances during the reigns of the Plantagenet family, wherein it was deemed expedient that the bad conduct or mistake of the sheriff should receive specific animadversion<sup>14</sup>.

Short duration  
of parliaments.

Another cause also operated to protect the sheriff, viz., the short duration of parliaments; thus the last parliament of Richard II., which may also be called the first of Henry IV., sat only one day, and during that period deposed one king, and placed another upon the throne<sup>15</sup>. The two longest parliaments were those of 8 Henry IV. and 23 Henry VI., the former of which sat, in three sessions, one hundred and fifty-nine days, and the latter, in four sessions, one hundred and seventy-eight; but both members and constituents remonstrated against such delays and expense<sup>16</sup>.

Stat. 6 Henry VI.  
c. 4.

Such proceedings of the sheriffs were productive of Stat. 6 Henry VI., c. 4, by which the sheriff or the knights returned by him, could traverse the validity of the inquests before the justices, and be heard in their own defence; and also of the Stat. 23 Henry VI., c. 14, which, after reciting Stat. 1 Henry V., c. 1, requiring the members for cities and boroughs to be chosen from men, citizens, and burgesses, residing, abiding, and free, states that the citizens and burgesses had always in cities and boroughs been chosen by citizens and burgesses, and no other, and to the sheriffs of the counties returned; but that the sheriffs, for their singular avail and lucre, had not made due elections of the knights, and sometimes no return of them, or the citizens and burgesses, and then provides that the former statutes should be kept in all points, and that every sheriff should deliver, without fraud, a suffi-

Stat. 23 Henry  
VI. c. 14.

<sup>12</sup> 3 Prynn, 157.

<sup>13</sup> Otterbourne, p. 191, in alluding to the slavish parliament of 1397, says, that of the knights returned on such occasion, they were not elected "*per communitatem, ut mos exigit, sed per regiam voluntatem.*" Vide etiam Prynn's Second Reg. 141. 5 Rot. Parl. 367, 450. Paston Letters passim.

<sup>14</sup> Introductio Glanv. Rep. 12. 4 Prynn, 261. 5 Rot. Parl. 7, 530.

<sup>15</sup> 4 Prynn, 449, 450. Walsing. 359. 10 Henry, 67.

<sup>16</sup> 4 Prynn, 482, 526. Holingshed, 531. 10 Henry, 67.

cient precept to every mayor and bailiff, to make, their due elections and return of the persons really elected, under a severe penalty.

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The policy of such enactments is obvious, because "in a constitution like ours, the safety of the whole depends on the balance of the parts; and the balance of the parts on their mutual independency on each other." Although this proposition of carrying on business, and maintaining government by powers absolutely distinct, and absolutely independent, has been described as a mere "Utopian Scheme," yet such objections have only proceeded from ignorance.

Preservation of  
the balance of  
the constitution.

Bolingbroke justly observes<sup>17</sup>, "Have not powers absolutely distinct and independent been joined by federal unions? Are no such examples to be found, even at this day? Has not this been brought about by the very reason given to prove that it can never happen; because men agree when they see reason for agreement; and they see reason for agreement, when they see their interest in agreeing?"

Powers distinct  
and independent  
have been joined  
by federal unions.

A king of Great Britain is that supreme magistrate, who has a negative voice in the legislature. He is intrusted with the executive power; and several other powers and privileges, which we call prerogatives, are annexed to this trust.

The king of  
England the first  
magistrate.

The two Houses of Parliament have their rights and privileges; some of which are common to both, others particular to each. They prepare, they pass bills, or they refuse to pass such as are sent to them. They address, represent, advise, remonstrate.

The supreme judicature resides in the lords.

Supreme court of  
judicature.

The commons are the grand inquest of the nation; and to them it belongs, likewise, to judge of national expenses, and to give supplies accordingly.

Grand inquest of  
the nation.

If the legislative as well as the executive power was wholly in the king, as in some countries, he would be absolute; if in the lords, our government would be an aristocracy; if in the commons, a democracy. It is this division of power, these distinct privileges attributed to the king, to the lords, and to the commons, which constitute a limited monarchy.

Division of  
power constitutes  
a limited mo-  
narchy.

Again, as they constitute a limited monarchy, so the wisdom of our government has provided, as far as human wisdom can provide, for the preservation of it, by this division of power, and by these distinct privileges.

<sup>17</sup> Bolingbroke's Hist. Eng. 70—74.

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Illegal usurpation of power by one part of the government, in what manner repressed.

National prosperity consists in adhering to the balance of the constitution.

Proceedings of each part of the government controlled by the other.

Resolutions of each part of the legislature are independent of the other parts.

If any one part of the three, which compose our government, should, at any time, usurp more power than the law gives, or make an ill use of a legal power, the other two parts may, by uniting their strength, reduce this power into its proper bounds, or correct the abuse of it; nay, if at any time two of these parts should concur in usurping, or abusing power, the weight of the third may, at least, retard the mischief, and give time and chance for preventing it.

To the strict adherence of supporting this balance may be ascribed our national prosperity; to its neglect or improper use, may be ascribed our misfortunes.

Since this division of power, and these distinct privileges constitute and maintain our government, it follows that the confusion of them tends to destroy it. This proposition is therefore true, that in a constitution like ours, the safety of the whole depends on the balance of the parts. Let us see whether it be true that the balance of the parts consists in their mutual independency.

The power which the several parts of our government have of controlling and checking one another, may be called a dependency on one another; and may be argued for by those, who want to throw darkness round them, as the dependency opposed to the independency, mentioned in the proposition. But the fallacy is gross.

This power of control in each, which results from the division of power amongst all the parts of our government, is necessary to the preservation of it, and thus a sort of constitutional dependency is created among them; but this mutual dependency cannot be opposed to the independency pleaded for.

On the contrary, this mutual dependency cannot subsist without such an independency; for whenever this independency is lost, the mutual dependency is that moment changed into a particular, constant dependency of one part on two; or, which is still more unreasonable, of two parts on one.

The constitutional dependency consists in this,—that the proceedings of each part of the government, when they come forth into action and affect the whole, are liable to be examined and controlled by the other parts.

The independency consists in this,—that the resolutions of each part, which direct their proceedings, be taken independently, and without any influence, direct or indirect, on the others.

Without the first, each part would be at liberty to attempt destroying the balance, by usurping or abusing power; but without the last, there can be no balance at all.

HENRY VI.  
1422—1461.

This may be illustrated by supposing a prince who claims and exercises a right of levying money without consent of parliament. He could not be opposed effectually, if the two Houses of Parliament had not a right to oppose him, to call his ministers to account, and to make him feel that, far from being absolute, he was under this constitutional dependency; but he would not be opposed at all, if the two Houses of Parliament were under his influence, and incapable of directing their proceedings independently of him."

#### 4. *Borough Institutions.*

In consequence of the increase of learning and the growing importance of citizens and burgesses, the municipal charters from 18 Henry VI. were, with a few exceptions, drawn with a degree of particularity, which had not previously existed, and those rights, such as the power of perpetual succession, —having a common name,—power of pleading and being impleaded by that name,—and the capacity of purchasing and possessing property, &c., which the citizens and burgesses had enjoyed at the common law, as incidental to the creation of a borough, were granted in express language, and those general terms by which the inhabitant householders of every borough had been hitherto described, as "men," "burgesses," and, "commonalty," merged into that of "corporation," under a more specific name;—the designation of corporation never having previously to this period been applied to the borough institutions.

Municipal charters drawn with greater accuracy.

The name of corporation first adopted.

But in every other respect such institutions were unchanged, and all the inhabitant householders of every city and borough, exercised the parliamentary and municipal franchises, not as a matter of favour, but as a constitutional right, arising from their freedom by birth and their liability to the local burdens. Political depravity was not sufficiently matured to deprive them of these, their unquestionable legal birthrights.

Borough institutions unchanged.

The municipal records of this period have been subsequently much erased, and essentially altered, in order to give

Municipal records essentially altered and erased.



**HENRY VI.**  
1422—1461.

Paston Letters.

the sanctity of usage to modern usurpation<sup>1</sup>: and the Paston Letters evince the anxiety of all parties relative to the parliamentary elections, and the early interference of the peers of the realm, which circumstances show the increase of the authority of the commons, and the efforts made to influence their deliberations.

<sup>1</sup> Additional MSS. Br. Museum, 6036, p. 19. Ib. 28 B. 6036—I Paston Letters, 98, 2; Ib. p. 103, 107, 122. M. and S. Hist. Boroughs, 229, et seq. 907. et in loc. passim.

## CHAPTER V.

### THE LINE OF YORK.

A.D. 1461—1485.

EDWARD IV., March 4, A.D. 1461,—April 9, A.D. 1483.

EDWARD V., April 9,—June 26, A.D. 1483.

RICHARD III., June 26, A.D. 1483,—August 22, A.D. 1485.

**EDWARD IV.**  
1461—1483.

No essential  
change from that  
of the reign of  
Henry VI.

THE reigns of Edward IV., Edward V., and Richard III. do not present any essential change from that state of things which had characterized the reign of Henry VI.

It has, however, been justly observed<sup>1</sup>, that the measures of parliament, during this age, furnish us with examples of a strange contrast of freedom and servility. They scruple to grant, and sometimes refuse, to the king the smallest supplies, the most necessary for the support of government, even the most necessary for the maintenance of wars, for which the nation, as well as the parliament itself, expressed great fondness: but they never scruple to concur in the most flagrant act of injustice or tyranny, which falls on any individual, however distinguished by birth or merit.

**EDWARD V.**  
1483.

Measures of par-  
liament furnish  
examples of a  
strange contrast  
of freedom, and  
servility.

**RICHARD III.**  
1483—1485.

These maxims, so ungenerous, so opposite to all principles of good government, so contrary to the practice of present parliaments, are very remarkable in all the transactions of the English history, for more than a century after the period in which we are now engaged.

## CHAPTER VI. THE HOUSE OF TUDOR.

A.D. 1485—1603.

HENRY VII.—HENRY VIII.—EDWARD VI.—MARY.—ELIZABETH.

### SECTION I.

HENRY VII., August 22, A.D. 1485,—April 22, A.D. 1509.

1. Objects for which Henry VII. was raised to the Crown.
2. Pecuniary Impositions.
3. Regulations of Police and Commerce.

#### *1. Objects for which Henry VII. was raised to the Crown.*

HENRY VII., a creature of the people, had been raised to the throne in order to cut up the roots of faction; to restore public tranquillity; and to establish a legal government on the ruins of tyranny.

HENRY VII.  
1485—1509.

He did the very reverse of this; his reign and that of his son, have been two of the severest under which our country hath groaned; and yet, in these very reigns, the foundations of liberty were laid much broader and stronger than ever<sup>1</sup>.

The king, under the pretext of establishing liberty, obtained an ascendancy over the deliberations of the commons, and, as practical proofs of the sincerity of his "liberal professions," to his "liberal friends," procured the powers of the Star Chamber<sup>2</sup>, and causelessly procured numerous bills of attainder, in order to gratify his hateful prejudices<sup>3</sup>.

Creation of the  
court of Star  
Chamber. Stat. 3  
Henry VII. c. 1.

The increased powers of the estates of parliament is evinced, by their vesting the crown in Henry VII. without alleging any title in him to that crown, by inheritance, election, or otherwise<sup>4</sup>.

This had the effect of exalting the authority of the commons; and Henry availed himself of such authority, by exercising all his tyrannical acts through their instrumen-

Powers of the  
commons exalted.

<sup>1</sup> Bolingbroke's Hist. Eng. 90.

<sup>2</sup> 6 Rot. Parl. 386, 400. Stat. 3 Henry VII. c. 1. 1 Brodie 158, et seq.; see vide Bacon, 581. 3 Lingard, 623. 3 Hume, 397.

<sup>3</sup> 3 Hume, 318, 322, 363, 383. Bacon, 611. Polyd. Virg. 593.

<sup>4</sup> 3 Lingard, 607—609. 3 Hume, 316.

HENRY VII.  
1485—1509.

Object of the  
king and com-  
mons to impo-  
verish the nobi-  
lity.

Revenues of the  
crown.

Number of tem-  
poral peers.

Almost absolute  
power of the  
king.

talities; in fact, both united in one common object, namely, to destroy the influence of the peers.

The facilities which had been given to the lords to alienate their lands, united with the enlargement of commerce and navigation, had increased the property of the commons, and, consequently, their power in the state; but as the influence of the nobility decreased, the tyranny of the king and commons increased, and to a much more dangerous extent than it had ever done under the feudal laws.

The extensive landed property which accrued to the crown, by succession to the inheritance of the Houses of Lancaster and York united, and by the confiscations which had followed the national commotions, had produced, during a period of above fourscore years, from the deposition of Richard II. to the accession of Henry VII., a great income; which, with the ordinary permanent income of the crown, arising from various duties and grants by parliament, and from the profits of tenures and other royal rights, had been managed with great economy; and Henry VII. was thus rendered, in a great degree, independent of that parliament, which had created his title to the throne, and particularly of the House of Commons, whose influence had been principally derived from the pecuniary necessities of the king.

In the House of Lords, the influence of the crown was always predominant, the number of temporal peers having during this reign, averaged about forty, and at the commencement not so many; the spiritual lords having been therefore always the majority of the house.

Henry VII. proceeded as he had been suffered to set out,<sup>5</sup> and established by degrees, and those not slow, a power almost absolute. By making an ill use of this power, the king was the real author of all the disorders in the state, and of all the attempts against his government; and yet, the better to prevent such disorders, and to resist such attempts, further powers were entrusted to him.

Because he had governed ill, it was put in his power to govern worse; and liberty was undermined for fear it should be overthrown. It hath fared sometimes with monarchy as with the church of Rome; both have acquired greater wealth and power by the abuse of what they had, and mankind have been egregiously the bubbles of both<sup>5</sup>.

<sup>5</sup> Bolingbroke's Hist. Eng. 93, 94.

2. *Pecuniary Impositions.*HENRY VII.  
1485—1509.

Although the parliaments of the first two Tudors cordially participated with the crown in every oppressive enactment, yet they invariably manifested reluctance to grant pecuniary assistance. Accordingly Henry VII. adopted the unfair system of "benevolences"<sup>1</sup> or "contributions," which gifts, though apparently voluntary, were "extortions;" and this improper conduct indirectly received a parliamentary sanction, by a statute enforcing the personal payment of arrears of money, which individuals had been induced to promise<sup>2</sup>.

System of benevolences and contributions.

Unceasing efforts were made by the king to amass treasure, and almost every alteration in the laws, however salutary or otherwise in their future consequences, had this, and this only, for their great and immediate object<sup>3</sup>.

The laws altered, for the accumulation of treasure.

Every scheme was adopted, in prosecutions upon old and forgotten penal laws, in order to extort money from the subject, and which was preferred to the framing of any new beneficial regulations.

Prosecutions upon old penal laws.

The feudal rights were instrumental to oppression. The lands of those who died without heirs reverted to the crown by escheat. Officers were appointed in every county to prosecute the king's rights; his title was to be found by the

Feudal rights instrumental to oppression.

<sup>1</sup> "A benevolence was originally a contribution made by the king's immediate vassals; but, from a relaxation of the ancient feudal principles, in the reign of Edward IV., had extended over the whole kingdom. It was always, except in the singular cases, considered as a free gift, and could not be levied, by force, from such as persisted in refusing it. But, although the people were not bound, in law, to contribute, they had every inducement from expediency; since a refusal was likely to be attended with greater inconveniency, than the payment of the money which was demanded. From the discretionary power of executing the law, the crown had many opportunities of harassing those who showed themselves unwilling to relieve its necessities; and seldom failed to make them heartily repent of their obstinacy. The king had the power of quartering troops in any part of the kingdom: by which means he was enabled, however unjustly, to create expenses and vexation to such of the inhabitants as had not complied with his demands. The very solicitation of a benevolence upon the part of the crown, was therefore justly regarded in the light of hardship; and to repress which, the Stat. 1 Richard III. c. 2, was enacted; which provides 'that the king's subjects shall from henceforth, in no wise, be charged by such charge, exaction, or imposition called a *benevolence*, nor by such like charge; and that such exactions called benevolences, before this time taken, be taken for no example to make such, or any like charge of any of the king's subjects hereafter, but shall be damned and annulled for ever.'"

<sup>2</sup> Stat. 11 Henry VII. c. 10; vide etiam 3 Hume, 376.

<sup>3</sup> 4 Black. Com. 428.

**HENRY VII.  
1485—1509.**

inquest of a jury, summoned at the instance of the escheator, and returned into the Exchequer. It then became a matter of record, and could not be impeached. Hence the escheators taking hasty or false inquests, defeated the right heir of his succession.

Course of justice  
furnished pre-  
tences for exact-  
ing money.

Excessive fines were imposed on granting livery to the king's wards on their majority. Informations for intrusions, criminal indictments, outlawries, or civil process; in short, the whole course of justice furnished pretences for exacting money; while a host of dependants on the court, suborned to play their part as witnesses, or even as jurors, rendered it hardly possible for the most innocent to escape these penalties.

Even the king's clemency seems to have sprung from the sordid motive of selling pardons:—he made a profit of every office in his court, and received money for conferring bishopricks<sup>1</sup>.

Extor- tions of the  
crow : tolerated,  
beca : they i  
pove ished the  
nobili<sup>2</sup>—

These extortions and corruptions contributed to the unpopularity of Henry, and answered the end of invigorating his power: they were tolerated by the commons, because the fines and forfeitures impoverished and intimidated the nobility.

### 3. *Regulations of Police and Commerce.*

Regulations are found among the statutes of this reign, both with regard to the police of the kingdom, and its commerce; but the former are generally contrived with much better judgment than the latter; the more simple ideas of order and equity are sufficient to guide a legislator in everything, that regards the internal administration of justice; but the principles of commerce are much more complicated, and require long experience and deep reflection, to be well understood in any state<sup>1</sup>.

Possession of the  
throne gives a  
sufficient title to  
the subjects' alle-  
giance.

Stat. II Henry  
VII. c. 1.

Under the family contests of the Plantagenets the lives and properties of individuals were held by a precarious tenure, which created the necessity of Stat. II Henry VII., c. 1<sup>2</sup>, by which a shield was acquired against the violence and vengeance of factions, and placed the civil duty of allegiance on a just foundation, by destroying the distinction between governments "*de jure*" and "*de facto*."

<sup>1</sup> 1 Ellis' Letters illustrative of English Hist. 36. 3 Turn. Hist. of England, 626. 1 Hallam's Const. Hist. 21. Hall's Chron. of England, 486.

<sup>2</sup> 3 Hume, 397.

<sup>3</sup> 3 Hume, 366, 367. 1 Hallam's Const. Hist. 12.

It enacts that no person, who in arms or otherwise assists the king, for the time being, should afterwards be convicted or attainted thereof as of an offence, by course of law, or by act of parliament, and all process and acts of parliament to the contrary should be void.

HENRY VII.  
1485—1509.

This law, although it is designated by Lord Bacon, as one "of a strange nature, more just than legal, and more magnanimous than provident," is remarkable for its reason, justice, and humanity,—and authorizes the constitutional maxim, that possession of the throne gives a sufficient title to the subject's allegiance, and justifies his resistance to those who may pretend a better right.

The Star Chamber exercised, under Henry VII. and Henry VIII., an almost boundless criminal jurisdiction, and without any appellate tribunal; and upon every subject in which the government felt itself interested, the court thereupon adjudicated. It punished all obnoxious persons, who, though they had been guilty of no breach of the law, had, directly or indirectly, offended the prince or his ministers.

Jurisdiction of the Star Chamber, and its component members.

The members of this tribunal were the confidential advisers of the crown. The penalties inflicted, entailed utter ruin, and the very design of its judicature was so repugnant to the spirit of freedom, that it was subsequently viewed with abhorrence; and finally abolished in the reign of Charles I.<sup>a</sup>

The benefit of clergy<sup>4</sup>, was remodelled by the legislature. This privilege being designed at first only for the actual clergy, had, by degrees, extended to all who could read, and so were capable of becoming clerks. • Though the "Stat. de Clero," by specifying the orders of clerks that should be entitled to this privilege, excluded actual laymen from claiming clergy; yet the former latitude soon prevailed again, and a capacity to read became once more synonymous with clergy: it had also been the usage to allow it to all such felons in every single offence.

The benefit of clergy remodelled by the legislature.

All lay offenders were now answerable to the demands of justice. Laymen being allowed their clergy only once, the criminal, on the first offence, being ordered to be burnt in the hand with a letter denoting his crime, after which he was

Lay offenders answerable to the demands of justice.  
Stat. 4 Henry VII. c. 13.

<sup>3</sup> Stat. 16 Charles I. c. 10; vide etiam Stat. 21 Henry VIII. c. 20.  
<sup>4</sup> Reeves, 149.

<sup>4</sup> It is properly the *privilege of learning*, as clergy, in the old French, signified science.

<sup>5</sup> 25 Edward III. Stat. 3, c. 4. 4 Reeves, 155—157.

**HENRY VII.**  
**1485—1509.**

Stat. 7 Henry  
VII. c. 1.

The Statute of  
Fines, 4 Henry  
VII. c. 24.

Stat. 1 Richard  
III. c. 7.

Beneficial enact-  
ments respecting  
a widow's dower.

General statu-  
table regulations.

punished capitally for any new offence. About three years afterwards, another statute<sup>6</sup> was passed, which related not to particular persons, but to particular offenders, it having enacted that soldiers departing out of the king's service without the license of their captain, should be deemed felons. And in 12 Henry VII. it was further ordained that, for the future, if any lay person premeditatedly murder his lord, master, or sovereign immediate, he should not be admitted to his clergy.

An important act of this reign is the "Statute of Fines," 4 Henry VII. c. 24, being a transcript, slightly modified, from one passed in the reign of Richard III.; its object was not to give the tenant in tail a greater power over his estate; but rather, by establishing a short term of prescription, to put a check on the suits for recovery of lands, which, after times of so much violence and disturbance, were naturally springing up in the courts.

The statute, in order to favour possession, enacts, that a fine levied with proclamations in a public court of justice shall, after five years, except in particular circumstances, be a bar to all claims upon land. This was its main scope; the liberty of alienation was neither necessary, nor probably intended to be given<sup>7</sup>.

It was deemed requisite to remedy an abuse which had been practised by widows, while in possession of their "dower," or what has since been called a "jointure." They were in this manner seised of the freehold, and consequently of all the privileges annexed to it; and could therefore exercise a right over it, which rendered those next in succession quite at their mercy:—it was therefore enacted<sup>8</sup>, that the widow should be incapable of making a property of that which had been allotted to her for an honourable provision during life; and the reversion to the heirs of the husband and his family, was thus effectually secured.

Laws were passed this reign, ordaining the king's suit for murder to be carried on within a year and a day<sup>10</sup>; suits were given to the poor in forma pauperis, that is, without paying dues for the writs, or any fees to the council<sup>11</sup>; penalties were provided against those who carried off any woman by

<sup>6</sup> Stat. 7 Henry VII. c. 1.

<sup>7</sup> Stat. 12 Henry VII. c. 7.

<sup>8</sup> 1 Hallam Const. Hist. 17.

<sup>4</sup> Reeves, 135—139.

<sup>9</sup> Stat. 11 Henry VII. c. 20.

<sup>10</sup> Stat. 3 Henry VII. c. 1.

<sup>11</sup> Stat. 11 Henry VII. c. 12.

<sup>12</sup> Stat. 3 Henry VII. c. 2.

force<sup>13</sup>; sheriffs were prohibited from fining an accused, unless he had been previously summoned before their court<sup>13</sup>; attaint of juries was to be granted in cases which exceeded forty pounds value<sup>14</sup>; actions popular were not allowed to be eluded by fraud or covin<sup>15</sup>; and the engaging retainers, and giving them badges or liveries<sup>16</sup> were prohibited.

HENRY VII.  
1485—1509.

Severe enactments were made against taking interest for money, which was then denominated usury<sup>17</sup>; the profits of exchange were forbidden, as savouring of usury<sup>18</sup>; evasive contracts, by which profits could be made from the loan of money, were also carefully guarded against<sup>19</sup>; actions upon the case had increased, and supplied the place of many ancient remedies; but being subjected to the delay, which was incident to the old process, it was enacted<sup>20</sup> by Stat. 19 Henry VII., c. 9, that the like process should be in actions upon the case, as in actions of trespass and debt, when sued in the King's Bench or Common Pleas.

Enactments  
against usury.

Regulations  
relative to actions  
upon the case.

Statutes were made against the exportation of money, plate, or bullion<sup>21</sup>,—and merchants alien, who imported commodities into the kingdom, were obliged to invest, in English commodities, all the money acquired by their sales, in order to prevent their conveying it away in a clandestine manner<sup>22</sup>.

Exportation of  
bullion for-  
bidden.

The exportation of horses was prohibited<sup>23</sup>; to promote archery, no bows were to be sold at a higher price than 6s. 4d<sup>24</sup>. Prices were affixed to woollen cloth<sup>25</sup>; to caps and hats<sup>26</sup>; and the wages of labourers were regulated by law<sup>27</sup>;—but it is evident these matters should have been left free, and entrusted to the common course of business and commerce.

Wages of la-  
bourers fixed.

A law had been enacted during the reign of Henry IV<sup>28</sup>. that no man could bind his son or daughter to an apprenticeship, unless he were possessed of 20s. a year in land, and Henry VII., because the decay of manufactures was complained of in Norwich, from the want of hands, exempted that city from the penalties of the law<sup>29</sup>. The county of Norfolk

<sup>13</sup> Stat. 11 Henry VII. c. 15.

<sup>14</sup> Ibid. c. 24. Stat. 19 Henry VII. c. 10.

<sup>15</sup> Stat. 3 Henry VII. c. 12.

<sup>16</sup> Stat. 3 Henry VII. c. 1 and 12; 19 Henry VII. c. 14.

<sup>17</sup> Stat. 3 Henry VII. c. 6.

<sup>18</sup> Ibid. c. 5.

<sup>19</sup> Stat. 7 Henry VII. c. 8.

<sup>20</sup> Stat. 19 Henry VII. c. 9.

<sup>21</sup> Stat. 4 Henry VII. c. 23.

<sup>22</sup> Stat. 3 Henry VII. c. 8.

<sup>23</sup> Stat. 11 Henry VII. c. 13.

<sup>24</sup> Stat. 3 Henry VII. c. 13.

<sup>25</sup> Stat. 4 Henry VII. c. 8.

<sup>26</sup> Ibid. c. 9.

<sup>27</sup> Stat. 11 Henry VII. c. 22.

<sup>28</sup> Stat. 7 Henry IV. c. 17.

<sup>29</sup> Stat. 11 Henry VII. c. 11.



HENRY VII.  
1485—1509.

Husbandry encouraged by increase of manufactures.

General character of the laws of this reign.

The policy of Henry VII.

obtained a like exemption with regard to some branches of the woollen manufacture<sup>30</sup>.

These absurd limitations proceeded from a desire\* of promoting husbandry, which, however, is never more effectually encouraged than by the increase of manufactures. For a like reason, the law<sup>31</sup> enacted against enclosures, and for the keeping up of farm-houses, scarcely deserves the high praises bestowed on it by Lord Bacon. If husbandmen understand agriculture, and have a ready vent for their commodities, a diminution of the people employed in the country need not be dreaded. All methods of supporting populousness, except by the interest of the proprietors, are violent and ineffectual<sup>32</sup>.

Lord Bacon, in commenting upon the laws of this reign, says, "Henry VII. may be considered as the greatest English legislator after Edward I., and this because his laws, who so marks them well, are deep and not vulgar, not made upon the spur of a particular occasion for the present, but out of providence for the future;" but, like the laws of all other times, his statutes seem to have had no further aim than to remove some immediate mischief, or to promote some particular end. It is needless to observe that, Lord Bacon's extensive knowledge did not include the Statute Book.

The only objects of Henry VII. were, *per fas aut nefas*, to maintain possession of the throne, depress the nobility, and exalt the prerogative; these he pursued without being blinded by passion, relaxed by indolence, or misled by vanity.

<sup>30</sup> Stat. 12 Henry VII. c. 1.

<sup>31</sup> 4 Henry VII. c. 1

<sup>32</sup> 3 Hume, 399—403.

## SECTION II.

HENRY VIII., April 22, A.D. 1509,—January 28, A.D. 1547.

- |                                        |                                    |
|----------------------------------------|------------------------------------|
| 1. Conciliatory Measures of the Crown. | 4. Servility of Parliament.        |
| 2. Pecuniary Impositions.              | 5. Privilege of Parliament.        |
| 3. Tyrannical Character of the King.   | 6. Administration of Justice.      |
|                                        | 7. The Suppression of Monasteries. |
|                                        | 8. The Reformation.                |

1. *Conciliatory Measures of the Crown.*

On the accession of Henry VIII., he found himself master of considerable wealth, in addition to which he received the grant of tonnage and poundage<sup>1</sup>, but, from his extravagance and other causes, his necessities for money soon became urgent.

HENRY VIII.  
1509—1547.

Having been foiled in attempts to levy pecuniary impositions on the subject, without the acquiescence of parliament, he availed himself of every opportunity to secure the cordial support of that assembly: thus, in Colchester, there is still extant a letter written by the king to the burgesses, requesting them to return a member whom he nominated<sup>2</sup>.

Failure of at-  
tempts at arbi-  
trary taxation.

The ascendancy which Henry acquired over the parliament, united with the dissemination of the art of printing, the spirit that had been raised by Wickliffe, the success of Luther, the disgust which the nation, from their increased intelligence, entertained against the papal authority, which had always been grievous in its nature, and scandalous in its exercise, their anxiety that the extravagant power and impertinent immunities of the clergy should be destroyed, and the cordial support that Henry gave in order to carry such feelings into effect, essentially rendered him an absolute sovereign.

Causes of the  
absolute power  
of the crown.

The rapacity of Henry VII. had been such, that it was deemed expedient to conciliate the nation; consequently a statute was enacted to correct those abuses which had prevailed, in finding the king's titles to lands by escheat<sup>3</sup>.

Correction of  
abuses.

That innovating statute<sup>4</sup>, was repealed<sup>5</sup> which enabled justices of assize, and of the peace, to determine all offences,

Stat. 11 Henry  
VII. c. 3, re-  
pealed.<sup>1</sup> Stat. 1 Henry VIII. c. 20. App.<sup>2</sup> M. and S. Hist. of Boroughs, 1093.<sup>3</sup> Stat. 1 Henry VIII. c. 8.<sup>4</sup> 11 Henry VII. c. 3<sup>5</sup> Stat. 1 Henry VIII. c. 6; et etiam Stat. 18 Eliz. c. 5.

HENRY VIII.  
1509—1547.

Severe enact-  
ments of previous  
statutes miti-  
gated.

Improper pun-  
ishment of Emp-  
son and Dudley.

except treason and felony, against any existing statute, without a jury, upon an information in the king's name.

Enactments were likewise made, by which the forfeiture upon the penal statutes was reduced to the term of three years; costs and damages were given against informers upon acquittal of the accused; more severe punishments were provided against perjury; the false inquisitions procured by Empson and Dudley were declared null and invalid; traverses were allowed, and the time of tendering them enlarged<sup>6</sup>.

To gratify the brutal and licentious appetites of an ignorant populace, as well as the more refined malignancy of political intrigue, Empson and Dudley, who had only enforced a strict execution of the laws, and acted in obedience to the commands of the king, were accused of crimes almost impossible in their nature, amounting to high treason, found guilty, and executed<sup>7</sup>; so that, in these times, justice was equally violated, whether the king sought power and riches, or courted popularity.

Admitting Empson and Dudley to be guilty of the crimes laid to their charge, yet the manner in which their lives were forfeited cannot be justified,—for a spirit of liberty can never approve of that process, even against the worst and most guilty of men, as may be applied to destroy the best and most innocent.

## 2. *Pecuniary Impositions.*

Royal revenues  
unequal to the  
charge of  
government.

General survey,  
A.D. 1522.

When the treasures of Henry VII. were dissipated, the royal revenues were unequal even to the ordinary charges of government, and which induced every exertion in order to supply such deficiency.

In 1522, the king caused a general survey to be made of the kingdom, as to the numbers of men, their ages, profession, stock, and revenue<sup>1</sup>, and then tyrannically issued privy seals to the most wealthy, demanding loans of money; and, in 1523, an edict was published, imposing a general tax, which was still called a loan, and 5s. was levied in the pound

<sup>6</sup> Stat. 1 Henry VIII. cc. 4, 8, 10, 11, 12, et al.

<sup>7</sup> Polydore, 620. Herbert, 5, 6, 12, 13. Rolls, 14. Lords' Journals, i.  
<sup>9</sup> Stat. 1 Henry VIII. cc. 12, 15. 4 Lingard, 8, 9.

<sup>1</sup> Herbert, 121, 122. Stowe, 316. Rymer, 770, et seq. 4 Hume, 46.  
4 Lingard, 68, 69.

upon the clergy, and 2s. upon the laity, promising the lenders they should be indemnified from the first subsidy<sup>2</sup>, but which was a precedent for the king's imposing taxes, without the consent of the legislature.

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A parliament and a convocation<sup>3</sup> were summoned shortly afterwards, and from the former, a grant of 800,000*l.* was demanded, divided into four yearly payments, to assist in the invasion of France, and for the defence of the north of England; although the commons had the courage to refuse granting little more than the moiety of the sum demanded<sup>4</sup>, yet they had not the courage to complain of the infringement of their privileges; in fact, they were extremely tenacious of their money, and refused a demand of the crown, which was far from being unreasonable: but they allowed an encroachment on national rights, in the case of improper taxation, to pass uncensured, though its direct tendency was utterly to subvert the liberties of the nation; and this line of conduct emboldened the king, under the plea of necessity, partially to levy in one year that, which parliament had granted him payable in four years, which was a new invasion upon the public franchise<sup>5</sup>. But although Henry frequently crushed his opponents in the commons, by reprimanding, to use his own language, the "varlets" in person, or by threatening messages, yet in pecuniary affairs the commons displayed a most intractable spirit, and, at one period of this reign, were not assembled for seven years.

Commons regardless of national rights.

Intractable spirit of the commons in pecuniary affairs.

In 1525, another royal edict was issued, under which commissioners had orders to demand the sixth part of every man's substance, payable in money, plate, or jewels, according to the valuation in 1522: but this tyranny was justly resisted to such an extent, that the edict was revoked, and all the sums that had been received under it were remitted<sup>6</sup>.

Arbitrary taxation resisted.

The government then had recourse to "benevolences," which many persons submitted to, in order to escape from the persecuting vengeance of the court and its miserable satellites.

Benevolences granted.

If any proof was requisite that Henry was a dishonourable

<sup>2</sup> Hall, 101, 102, 105. Herbert, 121, 122. Fiddes, Collect. 92. 4 Hume, 46.

<sup>3</sup> 3 Wilk. Con. 698—701. 1 Strype, 49.

<sup>4</sup> 4 Hume, 47, 48.

<sup>5</sup> 4 Hume, 48. Hall, 656, 672. 1 Strype's Eccles. Mem. 49. 1 Ellis's Letters illustrative of English History, 220.

<sup>6</sup> Hall, 137—142. 4 Lingard, 87.

# HENRY VIII. 1509—1547.

Dishonourable  
character of the  
king, and ser-  
vility of parlia-  
ment.

and a selfish wretch, and that the commons were of a character the most servile, it is that statute, wherein "they do for themselves, and all the whole body of the realm which they represent, freely, liberally, and absolutely, give and grant unto the king's highness, by authority of this present parliament, all and every sum and sums of money which to them and every of them, is, ought, or might be due, by reason of any money, or any other thing, to his grace at any time heretofore advanced or paid by way of trust or loan, either upon any letter or letters under the king's privy seal, general or particular, letter missive, promise, bond, or obligation of repayment, or by any taxation, or other assessing, by virtue of any commission or commissions, or by any other mean or means, whatever it be, heretofore passed for that purpose<sup>7</sup>."

The debts thus released had been assigned over by many to the crown creditors, and some had been given as family settlements, it not being contemplated that, a king and his parliament could participate in a transaction of so swindling a character; but it is said by Hall, that most of this House of Commons held office under the crown.

This precedent was likewise adopted in 1544, when the king was again released by statute of all moneys borrowed by him since 1542, with the additional provision, that if he should have already discharged any of such debts, the party or his heirs should repay his majesty<sup>8</sup>.

In 1546<sup>9</sup>, a "benevolence" was the expedient to which the government had recourse. The commissioners who were appointed for its levy, were directed to incite all men to a loving contribution according to the rates of their substance, as they were assessed at the last subsidy, calling on no one whose lands were of less value than 40s., or whose chattels were less than 15*l.*; but it is intimated that the least which his majesty can reasonably accept, would be 20*d.* in the pound on the yearly value of land, and half that sum on moveable goods. They were to summon but a few to attend at one time, and to commune with every one apart, "lest some one unreasonable man, amongst so many, forgetting his duty towards God, his sovereign lord, and his country, may go

Instructions to  
levy the benevo-  
lence, in A.D.  
1546.

<sup>7</sup> 6 Rot. Parl. 164. Burnet, App. No. 31. Act 26, An. Reg. 21 Henry VIII. 1 Hallam, Const. Hist. 31, 32.

<sup>8</sup> Stat. 35 Henry VIII. c. 12. Sanders, 203. Lords' Journals, 265.

<sup>9</sup> 15 Rymer, 84.

about by his malicious frowardness to silence all the rest, be they never so well disposed."

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They were to use "good words and amiable behaviour" to induce men to contribute, and to dismiss the obedient with thanks. But if any person should withstand their gentle solicitations, alleging either poverty or some other pretence, which the commissioners should deem unfit to be allowed, then, after failure of persuasions, and reproaches for ingratitude, they were to command his attendance before the privy council, at such time as they should appoint, to whom they were to certify his behaviour, enjoining him in silence in the mean time, that his evil example might not corrupt the better disposed<sup>10</sup>.

Those who refused to contribute to the benevolence, were to appear before the privy council.

A London alderman, inspired with "patriotism," refused to contribute to the benevolence; the result was his being compelled to serve in the northern wars as a soldier, under the greatest privations, was then made prisoner by the Scots, and had to pay a much larger sum for his ransom, than had been required from him in the first instance<sup>11</sup>.

### 3. *Tyrannical Character of the King.*

The cruel disposition of Henry, was early and unfortunately too amply illustrated in the executions of the Earl of Suffolk<sup>1</sup> and the Duke of Buckingham<sup>2</sup>; but after the disgrace of the wronged and ill-abused Wolsey, no persons could reckon themselves secure from his murderous or tyrannical decrees: and "many perished by sentences which we can hardly prevent ourselves from considering as illegal, because the statutes to which they might be conformable seem, from their temporary duration, their violence, and the passiveness of the parliaments that enacted them, rather like arbitrary invasions of the law than alterations of it<sup>3</sup>."

Unjustifiable enactments.

By the statutes of 1534, not only an oath was imposed to

<sup>10</sup> 1 Lodge's *Illustrations of British History*, 711. Strype's *Ecclesiastical Memorials*, App. n. 119. 1 Hallam's *Constitutional History*, 33.

<sup>11</sup> 15 Rymer, 84. Lodge, 80. Vide etiam Sanders, 203, 204. Stowe, 588. Herbert, 587. 1 Strype, 333.

<sup>3</sup> 3 Hume, 433. 1 Hallam's *Constitutional History*, 35, 36.

<sup>2</sup> Year Book, 13 Henry VIII. H. T. Stowe, 514. Hall, 35. Herbert, 100. 4 Lingard 62. 4 Hume, 27, 28.

<sup>1</sup> 1 Hallam's *Constitutional History*, 37.

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1509—1547.

Victims sacrificed either to the revenge, caprice, rapacity, or lust of Henry VIII.

maintain the succession in the heirs of the king's second marriage, in exclusion of the Princess Mary, but it was made high treason to deny that ecclesiastical supremacy of the crown, which, till about two years before, no one had ever ventured to assert. A number of persons, among whom were Bishop Fisher<sup>4</sup> and Sir Thomas More<sup>5</sup>, "whose name can ask no epithet," were executed for not acknowledging such supremacy<sup>6</sup>, although the latter personage offered to take the oath to maintain the succession, which, he properly said, the legislature were competent to alter.

Numerous other victims were sacrificed, either to the revenge, caprice, rapacity, or lust of this monarch<sup>7</sup>, the most distinguished of whom were the Countess of Salisbury, Earl of Essex, who were attainted by the Houses of Lords and Commons without being heard in their defence<sup>8</sup>, Earl of Surrey<sup>9</sup>, and Anne Boleyn<sup>10</sup>; as to the licentious Catherine Howard<sup>11</sup>, she deserved her fate; and it was she that caused the enactment of Stat. 33 Henry VIII., c. 21, whereby any woman whom the king should marry as a virgin, incurred the penalties of treason, if she did not previously reveal any failings that had disqualified her for the service of Diana.

Stat. 33 Henry VIII. c. 21.

Caprices of the king blindly submitted to.

Compliance was always yielded to the king's caprices, and liberty of the subject was despised; for notwithstanding the violent prosecution of whatever he was pleased to term heresy, the laws of treason were multiplied beyond all former precedent<sup>12</sup>.

<sup>4</sup> Stat. 26 Henry VIII. cc. 1, 2, 13. Poli Apol. ad Car. 96. Fuller, b. 5. 203. 4 Hume, 138.

<sup>5</sup> Ep. Gul. Corvini in App. ad Epis. Erasmi, 1763. Pole, lxxxix.—xciv. Stapleton, Vit. Mor. 335. 1 State Trials, 59. More's Works, 1429, 1447. Herbert, 393. 4 Hume, 139, 140. 4 Lingard, 211, 212.

<sup>6</sup> Chauncey's *Historia aliquot nostri sæculi Martyrum*, Moguntiae, 1550. Pole's *Defensio Eccles. Unit.* fol. lxxxiv.; and his *Apology to Caesar*, 98. 1 Strype, 196. 4 Lingard, 305. 4 Hume, 130—140.

<sup>7</sup> "For testimonies of this kind, some urge two queens; one cardinal (in proinctu at least), or two (for Pole was condemned, though absent); dukes, marquesses, earls, and earls' sons, twelve; barons and knights, eighteen; abbots, priors, monks, and priests, seventy-seven; of the more common sort, between one religion and another, huge multitudes."—Lord Herbert's *Life of Henry VIII.* 267.

<sup>8</sup> 1 Burnet, 278. 4 Lingard, 284, 285, 297, 299, 300, 303. 4 Hume, 197, 207, 208.

<sup>9</sup> 4 Lingard, 351, 352. 4 Hume, 262.

<sup>10</sup> 1 Burnet, 201—205. 2 Ibid. 119. Hall, 228. Stat. 28 Henry VIII. c. 7. 4 Hume, 160.

<sup>11</sup> Lords' Journals, 171, 172, 176. 4 Hume, 218, 219.

<sup>12</sup> 4 Hume, 162—163.

Nothing renders the crime of high treason more arbitrary, than declaring people guilty of it for indiscreet speeches. Words do not constitute an overt act; they remain only in idea. They generally, when considered by themselves, have no determinate signification: for this depends on the tone in which they are uttered. It often happens that, in repeating the same words, they have not the same meaning; this meaning depends on their connexion with other things; and sometimes more is expressed by silence, than by any discourse whatsoever. As there can be nothing so equivocal and ambiguous as all this, how is it possible to convert it into a crime of high treason? Wherever this law is established; there is an end, not only of liberty, but even of its very shadow<sup>13</sup>.

But in this reign, even words to the disparagement of the king, queen, or royal issue, were subjected to the penalty of high treason; and so little care was taken in framing these rigorous statutes, that they contain obvious contradictions<sup>14</sup>, insomuch that, had they been strictly executed, every man, without exception, must have fallen under the penalty of treason.

By one statute<sup>15</sup>, for instance, it was declared treason to assert the validity of the king's marriage, either with Catherine of Arragon or Anne Boleyn. By another<sup>16</sup>, it was treason to say anything to the disparagement or slander of the Princesses Mary and Elizabeth, and to call them spurious, would have been construed to their slander.

Nor would even silence, with regard to these points, have saved a person from such penalties: for, by the former statute, whoever refused to answer upon oath to any point contained in that act, became liable to the pains of treason.

The king needed only propose to any one a question, with regard to the legality of either of his first marriages: if the person were silent, he was a traitor by law; if he answered either in the negative or in the affirmative, he was no less a traitor. So monstrous were the inconsistencies which arose from the furious passions of the king, and the slavish submission of his parliaments, that it is hard to say whether these

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Words do not constitute an overt act, they remain only in idea.

Words to the disparagement of the royal family, made treason.

Difficult to determine, whether the statutes of Henry VIII. were owing to his precipitancy, or to a formed design of tyranny.

<sup>13</sup> 1 Mont. B. XII. c. 12. Modestin. leg. 7, in § ad leg. Jul. maj.

<sup>14</sup> Stat. 25 Henry VIII. c. 22; 26 Henry VIII. c. 13; 28 Henry VIII. c. 18; 32 Henry VIII. c. 25; 33 Henry VIII. c. 21.

<sup>15</sup> 28 Henry VIII. c. 7. 4 Hume, 269.

<sup>16</sup> Stat. 35 Henry VIII. c. 1.



**HENRY VIII.** contradictions were owing to Henry's precipitancy, or to a formed design of tyranny.  
1509—1547.

Henry VIII. empowered to regulate the line of succession.

In consequence of the uncertainty in the line of succession, the king was empowered by parliament, on failure of issue by Jane Seymour, or any other lawful wife, to make over and bequeath the kingdom to any person at his pleasure, not even reserving a preference to the descendants of former sovereigns<sup>17</sup>.

By a subsequent statute, the princesses Mary and Elizabeth were nominated in the entail, after the king's male issue, subject, however, to such conditions as he should declare, by non-compliance with which, their right was to cease<sup>18</sup>.

Deviser of the crown.

The king then devised the crown, upon failure of issue from his three children, to the heirs of the body of Mary, Duchess of Suffolk, the younger of his two sisters, postponing, if not excluding, the royal family of Scotland, descended from his elder sister, Margaret.

The king enabled to repeal all enactments made before he was twenty-four years of age.

Another measure was adopted, as mischievous in principle, as those which regarded the succession to the throne, by which any king could repeal, by letters patent, all parliamentary enactments made before he was twenty-four years of age<sup>19</sup>; so that, in a long minority, anarchy had every prospect in acquiring the ascendant.

#### 4. *Servility of Parliament.*

The Six Articles.

The parliament, after passing the "Six Articles<sup>1</sup>," by which they assigned their religious liberties, proceeded in the same spirit to surrender their civil, and to cause a total subversion of the constitution. They gave to the king's proclamation the same force as to a statute, and framed this law as if it were only declaratory, and intended to explain the natural extent of royal authority. It recites,—

Proclamations of the king to have the force of laws.

"That the king had formerly set forth several proclamations which froward persons had wilfully contemned, not considering what a king by his royal power may do; that this licence might encourage offenders, not only to disobey the laws of Almighty God, but also to dishonour the king's most royal majesty, who may full ill bear it; that sudden emergencies

<sup>17</sup> Stat. 28 Henry VIII. c. 7.

<sup>18</sup> Stat. 35 Henry VIII. c. 1. 1 Hallam, Const. Hist. 46, 47.

<sup>19</sup> Stat. 28 Henry VIII. c. 17. 4 Hume, 164.

<sup>1</sup> Stat. 31 Henry VIII. c. 14. Herbert in Kennet, 219.

often occur, which require speedy remedies, and cannot await the slow assembling and deliberations of parliament; and that, though the king was empowered, by his authority, derived from God, to consult the public good on these occasions, yet the opposition of refractory subjects might push him to extremity and violence. For these reasons, the parliament, that they might remove all occasion of doubt, ascertained by a statute this prerogative of the crown, and enabled his majesty, with the advice of his council, to set forth proclamations, enjoining obedience under whatever pains and penalties he should think proper. And these proclamations were to have the force of perpetual laws<sup>2</sup>."

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The parliament facilitated the execution of this law, by authorising the appointment of nine privy councillors, with powers to punish all transgressors of such proclamations<sup>3</sup>. The total abolition of juries in criminal cases, as well as of all parliaments, seemed, if the king had so pleased, the necessary consequence of this enormous law. He might issue a proclamation, enjoining the execution of any penal statute, and afterwards try the criminals, not for breach of the statute, but for disobedience to his proclamation<sup>4</sup>.

Formation of a  
new court of jus-  
tice.

The mode in which criminal prosecutions was conducted, can only be designated as, infamous. The accused, under the influence of threats or future favour, was interrogated until he had made some unguarded confession. It was then submitted to the grand inquest, and if the charge was substantiated to their satisfaction, the essential question that was ultimately submitted to the petit jury was, which of the two were more worthy of credit, the prisoner who maintained his innocence, or the grand inquest which had pronounced his guilt. The prisoner on his trial could not insist on the production of his accusers, in order to cross-examine them; neither could he claim the aid of counsel to repel the partial observations of the crown lawyers<sup>5</sup>.

Mode in which  
criminal prosecu-  
tions were  
conducted.

Another mode of criminal process was by bill of attainder, under which, instead of a public trial, a bill was introduced into parliament, accompanied with evidence to support its allegations, which, if satisfactory to the partial judgment of

Bill of attainder.

<sup>2</sup> Stat. 31 Henry VIII. c. 8.

<sup>3</sup> Stat. 34 Henry VIII. c. 23. 4 Hume, 196.

<sup>4</sup> Lord Mountjoy entered a protest against this law, which, according Burnet, is the only protest entered against any public bill during this reign.

<sup>5</sup> 2 Reeves, 268—459; 4 Ibid. 494—505. 4 Lingard, 365, 366.

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King acknowledged the supreme head of the church.

Royal proclamation to have, not only the force of law, but the authority of revelation.

The parliament served the king, as an instrument and a shield.

Revolution in England can only be effected through the House of Commons.

Exemption from arrest on civil process.

Case of Ferrers.

the legislature, the prisoner was executed, without having had an opportunity to vindicate his innocence.

The prostitute spirit of the parliament is anew exemplified in Stat. 37 Henry VIII., c. 17, in which they recognise the king to have always been, by the word of God, supreme head of the church of England; and acknowledge that archbishops, bishops, and other ecclesiastical persons, have no manner of jurisdiction but by the royal mandate. To him alone, say they, and such persons as he shall appoint, full power and authority is given from above to hear and determine all manner of causes ecclesiastical, and to correct all manner of heresies, errors, vices, and sins whatsoever.

No allusion is made of the concurrence of a convocation, nor even of a parliament. The royal proclamations are in effect acknowledged to have, not only the force of law, but the authority of revelation; so that the king could regulate the actions of men, control their words, and even direct their inward sentiments and opinions<sup>6</sup>.

No monarch ever wielded the sceptre with such careless indifference to the liberties of his country as did Henry VIII., nor would the people have permitted him to commit with impunity, the violences of which he was guilty, had not a parliament served him as an instrument and a shield.

With what far-seeing sagacity was Montesquieu endued, and how deep was his insight into the spirit of our country and its institutions, when he foretold that, England's destruction could only come, when her legislative government was more corrupt than her executive! And how wisely have we been forewarned by Burke, that a revolution in England could only be effected through the House of Commons.

### 5. *Privilege of Parliament.*

Notwithstanding this age of obedience, the commons were enabled to acquire the right of "exemption from arrest on civil process during the session;" for under the Plantagenet dynasty, this privilege was claimed by a writ of privilege out of chancery, or by a special act of parliament.

In 1543, a member of the name of Ferrers was arrested on his way to the house; the commons sent their serjeant to demand his release from the gaolers and sheriffs of London;

<sup>6</sup> 4 Hume, 251, 252.

and upon their refusal to release Ferrers, they compelled them, and the plaintiff who had issued the writ, to appear at the bar of the house, and forthwith committed them to prison; the king, in the presence of the judges, unequivocally recognising this *unprecedented* assertion of privilege, by the commons<sup>1</sup>, by the following declaration. "And further, we be informed by our judges, that we at no time stand so highly in our estate royal, as in the time of parliament; wherein we as head, and you as members, are conjoined and knit together into one body politic; so as whatsoever offence or injury (during that time) is offered to the meanest member of the house, is to be judged as done against our person and the whole court of parliament; which prerogative of the court is so great, (as our learned counsel informeth us,) as all acts and processes coming out of any other inferior courts, must, for the time, cease and give place to the highest<sup>2</sup>."

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Declaration by the King, that all ad proceedings out of inferior courts must cease, and give place to the court of parliament.

#### 6. *Administration of Justice.*

The Reformation much contributed to the equitable administration of justice, because, previously thereto, although the church could not herself inflict civil punishment, yet, the civil magistrate was not permitted to try the offences of her members, and lay criminals were protected in the churches and sanctuaries.

These abuses received a corrective, in consequence of the privilege of clergy being abolished for the crimes of petty treason, murder, and felony, to all under the degree of a sub-deacon<sup>1</sup>. No sanctuaries were recognised in cases of high treason, murder, felony, rapes, burglary, and petty treason<sup>2</sup>. These laws were absolutely requisite; for such was the state of lawless society, during this reign, that 72,000 criminals were executed for theft and robbery<sup>3</sup>; notwithstanding, which the priesthood publicly branded these statutes, "as contrary to the law of God, and to the liberties of the holy church; and that all who had assented had incurred the censures of the church<sup>4</sup>."

Privilege of clergy, and of sanctuaries, abolished.

<sup>1</sup> Crompton, Jurid. Courts. 8. 3 Hollingshed, 824. 1 Hatsell's Precedents, 53. 36 Henry VIII. fol. 61. Dyer, 275. 1 Hallam's Const. Hist. 366.

<sup>2</sup> 1 Hatsell, 57. Crompt. Jurid. Courts, fol. 9, 10.

<sup>3</sup> Stat. 4 Henry VIII. c. 2; 23 Henry VIII. c. 1.

<sup>4</sup> Stat. 22 Henry VIII. c. 14; 26 Henry VIII. c. 13; 32 Henry VIII. c. 12.

<sup>3</sup> 4 Hume, 275.

<sup>4</sup> 1 Burnet, Hist. Ref. 21, et seq.; vide etiam 1 Strype's Eccl. Mem. 129. Halle, 1880.

HENRY VIII.  
1509—1547.

Statutes of Wills  
and Uses.

Alterations in  
the mode of con-  
veyancing.

Bankrupt and  
usury laws.

Impolitic laws.

Improvement in  
the administra-  
tion of justice.

The Statute of Wills<sup>5</sup> and the Statute of Uses effected an important change; the former, by allowing the *devise* of real estates by will, which before was in general forbidden; the latter, by endeavouring to destroy the intricate nicety of *uses*.

From the Statute of Uses, and another statute of the same antiquity (which protected estates for years from being destroyed by the reversioner), an alteration took place in the mode of conveyancing: the ancient assurance by feoffment and livery upon the land being subsequently seldom practised; the transferring of property, by secret conveyances to uses, and long terms of years, being generally created in mortgages and family settlements: and estates tail were reduced to little more than the conditional fees at the common law, before the passing of the Statute de Donis.

Bankrupt laws were introduced for the punishment of the fraudulent, as well as for the relief of the unfortunate trader. The interest of money was fixed at 10% per cent., being the first legal interest known in England; and regulations were made for beggars and vagrants<sup>6</sup>.

Several impolitic laws were enacted,—such as the fixing of the wages of artificers<sup>7</sup>,—prohibiting luxury in apparel<sup>8</sup>,—fixing the prices of provisions<sup>9</sup>,—and confining particular manufactures to particular towns<sup>10</sup>.

But the incorporation of Wales with England<sup>11</sup>, and the more uniform administration of justice, by destroying some counties palatine, and abridging the unreasonable privileges of such as remained, added dignity and strength to the monarchy, which, united with the redress of many grievances and oppressions, will ever make the administration of Henry VIII. a very distinguished era in the annals of judicial history<sup>12</sup>.

### 7. *Suppression of Monasteries.*

Though the “Statutes of Mortmain” under Edward I. and Edward III. had restricted the increasing opulence of the clergy, yet, as these were eluded by licenses of alienation, a

<sup>5</sup> Stat. 34 and 35 Henry VIII. c. 5.

<sup>6</sup> Stat. 22 Henry VIII. c. 12; Stat. 37 Henry VIII. c. 25.

<sup>7</sup> Stat. 6 Henry VIII. c. 3.

<sup>8</sup> Stat. 1 Henry VIII. c. 14; 6 Henry VIII. c. 1; 7 Henry VIII. c. 6.

<sup>9</sup> Stat. 24 Henry VIII. c. 3; 33 Henry VIII. c. 11.

<sup>10</sup> Stat. 21 Henry VIII. c. 12; 25 Henry VIII. c. 18.

<sup>11</sup> Stat. 27 Henry VIII. c. 7, 24, 26.

<sup>12</sup> 4 Black. Com. 431.

larger proportion of landed wealth was constantly "accumulating in hands, which lost nothing they had grasped."

As the monasteries were in general exempted from episcopal visitation, and the members entrusted with the care of their own discipline, abuses had gradually prevailed and gained strength by connivance, which resulted from the indolent lives of the clergy, and from their possessing very indistinct views of moral obligations, with a great facility of violating them<sup>1</sup>.

From the reports of the commissioners in the reign of Henry VIII.<sup>2</sup> men and women were utterly abandoned to every disgusting species of lustful and criminal propensity, and those who were confined together, were cursed with hearts more selfish, and tempers more unrelenting towards each other, than fell to the share of any other class in society.

Papal usurpations, the tyranny of the inquisition, the multiplicity of holy days, all these fetters on liberty and industry, were ultimately derived from the authority and insinuation of monks, whose habitations, being established everywhere, proved, in a religious view, so many seminaries of superstitions, illusions, lies, and folly.

Thus concerning relics<sup>3</sup>, there were more pieces of the true cross than would have made a whole one; the teeth of St. Apollonia, which were distributed as amulets against the tooth-ache, filled a tun; but the best "stock in trade" was a phial, which the clergy stated, contained a portion of our blessed Saviour's blood, and which suffered itself to be seen by no person in a state of mortal sin, but became visible when the penitent, by his offerings, had obtained forgiveness; this was performed by keeping blood, which was renewed every week, in a phial, one side of which was thick and opaque, the other transparent, and turning it by a secret hand, as the case required.

The "market" was likewise bountifully supplied with the

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Monasteries exempted from ecclesiastical visitations.

Reports of the ecclesiastical commissioners.

Monasteries the seminaries of superstitions, illusions, lies, and folly.

Fraudulent imposition as to relics.

<sup>1</sup> Hallam's Const. Hist. 95. <sup>2</sup> Burnet, 190. <sup>1</sup> Stype, c. 35. <sup>2</sup> Ellis's Letters, 71. <sup>3</sup> Wilkins, 630. Fosbrooke's British Monachism.

<sup>2</sup> "For the lewdness of the confessors of nunneries, and the great corruption of that state, whole houses being found almost all with child; for the dissoluteness of abbots, and the other monks and friars, not only with "impure females, "but married women, and other brutal practices: the full report of this visitation is lost, yet I have seen an extract of a part of it, concerning one hundred and forty-four houses, that contains abominations in it, equal to any that were in Sodom."—1 Burnet, 347, citing Cot. Lib. Cleop. E. 4. "The nuns had also arts to hinder conceptions and make abortions." 1 Burnet, 439.

<sup>3</sup> 1 Burnet, 436—444, et etiam 342—344. Fuller, Hist. Abbeyes, B. vi. 323, 333.

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1509—1547.

Shrines and treasures invaded and seized.

Becket unsainted and unshrined.

The monks endeavour to distract the civil government.

Reasons assigned by Henry VIII. for vesting the monastic property in the crown.

parings of St. Andrew's toes; coals that roasted St. Lawrence; girdles of the Virgin; heads of St. Ursula; felts of St. Thomas of Lancaster; and parts of St. Thomas of Canterbury's shirt—much revered by big-bellied women.

Shrines and treasures, which otherwise it might have been dangerous to have invaded, were now thought rightfully to be seized, when they had been procured by such gross and palpable impositions. The gold from Becket's shrine alone filled two chests, which were a load for eight strong men. Becket was unsainted, as well as unshrined, by the king, who taking up the cause of Henry II., ordered the archbishop's name to be erased from the kalendar, and his bones to be burnt; by which another fraud was discovered,—the skull of the "martyr" being found with the rest of the skeleton, in his grave, though another had been manufactured to perform miracles<sup>4</sup>. It was by such abominable frauds and juggling tricks, that the Roman Catholic priesthood were enabled to acquire an undue influence over the uneducated classes of society.

When the monks found that they were liable to the visitation of Henry VIII., and that the austere rules of their institute were intended to be enforced,—that the sacredness of papal bulls was rejected,—and that the progress of the Reformation abroad, had been everywhere attended with the abolition of the monastic orders, they, to prevent like consequences in England, exerted all their influence to inflame the people against the civil government; and Henry, finding their safety irreconcilable with his own, determined to seize the present opportunity, and utterly destroy his declared enemies.

Accordingly proposals were made to parliament for vesting the monastic property in the crown, and the reasons assigned were,—that it would be the means of properly supporting the state of royalty, and of defending the subject, of aiding confederates, and of rewarding public servants; and that, if the church property was granted to the sovereign, he would never have occasion to apply to his subjects for pecuniary aid, but would be enabled to support 40,000 well-trained soldiers for the public defence, beyond the then present military establishment,—and to create temporal peers in the place of abbots and priors<sup>5</sup>.

<sup>4</sup> Southey's Book of the Church, 277, 278. 4 Hume, 179.

<sup>5</sup> Howe's Pref. to Stow's Ann. 1 Strype's Mem. 345. 4 Inst. 44. 1 Brodie, 84.

The parliament were not deceived by these professions, but justly conceiving the religion of the monks was hypocrisy, their morality knavery, and that "monastic," like all other institutions, should be made subservient to the growth of feelings, the development of principles, and the changes of every kind produced by time, acquiesced in the wishes of the crown.

It was deemed expedient to commence with the smaller monasteries, and three hundred and seventy-six of these establishments, whose respective annual values were less than 200*l.*, were suppressed by Stat. 27 Henry VIII. c. 28<sup>e</sup>, which recited,—that when the congregation of monks, canons, or nuns, was under the number of twelve persons, carnal and abominable living was commonly used, to the waste of the property, the slander of religion, and the great infamy of the king and of the realm. Their manner of life had, by cursed custom, become so inveterate, that no reformation was possible, except by utterly suppressing such houses, and distributing the members among the great monasteries, wherein religion was right well observed, but which were destitute of such full members as they ought to keep. In order, therefore, that the possessions of such small religious houses, instead of being spent, spoiled, and wasted for increase of sin, should be converted to better uses, and the unthrifty religious persons, so spending the same, be compelled to reform their lives, parliament humbly desired the king would take all such monasteries to himself and his heirs for ever.

If the recital to this statute was not accurate, it seems extraordinary that the greater abbots, of whom six-and-twenty at that time voted in parliament, should have consented to it. Even before this act had passed, some of the smaller houses were voluntarily surrendered to the king. The motive may have been a consciousness of crimes which stood in need of pardon, an expectation of favour, or, what is not less probable, the prevalence of the reformed opinions among the members; for the convents produced many advocates for the Reformation, and some of its martyrs<sup>7</sup>.

The crown, by the suppression of these institutions, acquired an income amounting to 32,000*l.* per annum, besides their goods, chattels, and plate, computed at 100,000*l.*<sup>8</sup>, and a court,

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1509—1547.

Dissolution of  
the smaller  
monasteries.

Recital of  
Stat. 27 Henry  
VIII. c. 28.

Unopposed by  
the greater  
abbots.

Revenues arising  
from the dissolu-  
tion of the lesser  
monasteries.

<sup>6</sup> Vide etiam 1 Burnet, 351, et seq.

<sup>7</sup> Southey's Book of the Church, 269.

<sup>8</sup> Hollingshed, 939.



HENRY VIII.  
1509—1547.

Dissolution of  
the larger  
monasteries.

The abbots sur-  
render their mo-  
nasteries.

called the "Court of Augmentation of the King's Revenue," was erected for the management of these funds<sup>9</sup>.

In 1540, the larger monasteries, which, in some instances, were of a more moral character<sup>10</sup> than the lesser monasteries, were dissolved. These great foundations were all surrendered; a few excepted, which against every principle of received law, were held to fall by the attainder of their abbots<sup>11</sup>; consequently parliament had only to confirm the king's title arising out of these surrenders and forfeitures, which they did<sup>12</sup>, cautiously reserving any rights of property, which private persons might enjoy over the estates thus oscheated to the crown, but vouchsafing not a word towards securing the slightest compensation to the dispossessed owners; and no protest was made against this injurious law, although the mitred abbots still sat in the House of Peers.

It is stated that, the scheme of engaging the abbots to surrender their monasteries had been conducted, with many invidious circumstances:—arts of all kinds had been employed; every motive, that could work on the frailty of human nature, had been set before them; and it was with great difficulty that, these dignified conventuals were brought to make a concession, which most of them regarded as

<sup>9</sup> Fuller, VI. 348. Stat. 27 Henry VIII. c. 27.

<sup>10</sup> The confession of the prior and Benedictines of St. Andrew's, in Northampton, is to be seen in the record of the Court of Augmentations: in which, with the most aggravating expressions that could be devised, they acknowledged their past ill life, "for which the pit of hell was ready to swallow them up. They confessed that they had neglected the worship of God, lived in idleness, gluttony, and sensuality; with many other woeful expressions to that purpose."

Other houses, as the monastery of Betlesden, resigned, with this preamble,—“That they did profoundly consider that the manner and trade of living which they, and others of their pretended religion, had for a long time followed, consisted in some dumb ceremonies, and other constitutions of the Bishop of Rome, and other foreign potentates, as the Abbot of Cisteaux: by which they were blindly led, having no true knowledge of God's laws; procuring exemptions from their ordinary and diocesan, by the power of the Bishop of Rome; and submitting themselves wholly to a foreign power, who never came hither to reform their abuses, which were now found among them. But that now, knowing the most perfect way of living is sufficiently declared by Christ and his apostles, and that it was most fit for them to be governed by the king, who was their supreme head on earth; they submitted themselves to his mercy, and surrendered up their monastery to him, on the twenty-fifth of September, in the thirteenth year of his reign.” This writing was signed by the abbot, the sub-prior, and nine monks. There are five other surrenders to the same purpose.—

<sup>11</sup> Burnet, 430, 431. Collect. numb. 3, sect. 4.

<sup>12</sup> Stat. 31 Henry VIII. c. 20.

<sup>13</sup> Stat. 31 Henry VIII. c. 13.

destructive of their interests, as well as sacrilegious and criminal in itself<sup>13</sup>: and even the statute confirming the surrender of the monasteries, contains, in an abstract sense, much falsehood, much tyranny, and, were it not that all private rights must submit to public interest, much injustice and iniquity.

The estates acquired by the crown by the suppression of the larger monasteries have been moderately estimated at 131,607*l.* per annum<sup>14</sup>.

The moveables of the smaller monasteries have been reckoned at 100,000*l.*, and, as the rents of these were less than a fourth of the whole, the aggregate value of moveable wealth may be calculated in the same proportion.

If the king had appropriated these revenues towards public exigencies, the crown would, in effect, have been absolute; because it would have been independent of parliamentary aid.

Henry, however, pursuing the wily advice of Cromwell, to secure the Reformation, distributed the abbey lands among the nobles and gentry, either by grant or by sale on easy terms, —thus securing the influence of such grantees, by the sure ties of private interest, and who henceforth strenuously opposed any return towards the dominion of Rome<sup>15</sup>.

Had it not been for this policy, it is not improbable that the see of Rome might have existed in England, some years after the death of Mary: but her parliaments, so obsequious in all matters of religion, adhered with a firm grasp to the possession of church lands; nor could the papal supremacy be re-established, until the titles of the lay possessors were sanctioned.

A part of the zeal of the same class in bringing back and preserving the reformed church, under Elizabeth, may be ascribed to a similar motive; not that these men were hypocritical pretenders to a belief they did not entertain, but that, according to the general laws of human nature, they gave a readier reception to truths which made their estates more secure<sup>16</sup>.

Another constitutional advantage accrued by this participation of ecclesiastical property, that the distribution of so large a portion of the kingdom among the nobles and gentry,

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Revenues acquired by the suppression of the larger monasteries.

Reformation secured by the dissolution of the monasteries.

Constitutional advantages from the distribution of ecclesiastical property

<sup>13</sup> 2 Collier, 158, et seq. 4 Hume, 199.

<sup>14</sup> Dr. Lingard, on the authority of Nasmith's edition of Tanner's *Notitia Monastica*, puts the annual value of the monastic houses at 142,914*l.*; but Burnet affixes a much greater value.

<sup>15</sup> 1 Burnet, 223.

<sup>16</sup> 1 Hallam's Const. Hist. 107.

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the elevation of so many new families, and the increased opulence of the more ancient, subsequently served as a counterpoise and corrective to the arbitrary prerogative of the crown.

Lay proprietors of ecclesiastical property, support the influence of the crown.

But until the titles of the purchasers and grantees were confirmed by time, their influence was thrown into the scale of the crown, which greatly increased its authority: because the state of parties, was so equally balanced, that the ascendancy belonged to the side which the king embraced. The fluctuating principles of Henry, as well as those to which he adhered, were calculated equally to alarm the one faction, and encourage the other: for, "In the whole progress of the changes," says Burnet, "his design seems to have been to terrify the court of Rome, and cudgel the pope into a compliance with what he desired;" and Clarendon justly observed, "He was not less a catholic at the hour of his death, than when he wrote against Luther"<sup>17</sup>.

Dissolution of the monasteries, not an act of illegal violence.

It has been gratuitously assumed that the dissolution of the monasteries was an act of illegal violence; but their dissolution was, constitutionally speaking, legal, because it was sanctioned by parliament, which being the supreme body in the nation, have always exercised a right to dispose of the property of its members; thus, persons guilty of treason are deprived of their property; others, as in rail-roads, are compelled to sell their property: the abstract question being one of public policy, and in this sense, parliament claimed the disposal of the revenues of the church.

If in the exercise of a public franchise, the power is abused, the law will, by regular process, take it away.

It is also a principle of law, that if in the exercise of a corporate or other public franchise, the power is abused, or those who are invested with the power will not use it, the law will, by regular process, take it away, in order to place it in better hands. The application of this measure of justice to the monasteries, was based upon every justifiable ground; those institutions had become abused<sup>18</sup>, and the governing

<sup>17</sup> Clarend. Hist. Church, 231. 1 Brodie, 90.

<sup>18</sup> "The monks in these houses abounding in wealth, and living at ease and in idleness, did so degenerate, that, from the twelfth century downward, their reputation abated much; and the privileges of sanctuaries were a general grievance, and oft complained of in parliament: for they received all that fled to them, which put a great stop to justice, and did encourage the most criminal offenders. They became lewd and dissolute, and so impudent in it, that some of their farms were let for bringing in a yearly tribute to their lusts; nor did they keep hospitality, and relieve the poor,

bodies had, in numerous instances, refused to apply a corrective to such abuses.

The concurrent voices of history and experience have proved that, what was suited to one condition of society, and to one stage of civilization, was, for that very reason unsuited to another;—so with monasteries, at one period of our history these institutions were highly beneficial, but as civilization increased, they became, in an inverse ratio, pernicious; their members having, as previously stated, been guilty of every diabolical excess, which could outrage heaven or shock humanity, consequently, upon the abstract grounds of “public policy,” their suppression was justifiable.

But the ultimate appropriation of the property belonging to the monasteries to lay purposes, was a scandalous robbery, and for which the pope had previously afforded a precedent.

The events of this period have occasioned a very false and ignorant, but popular notion, that the property of the “Roman Catholic Church” was transferred, in this reign, to a new church, commonly called the “Protestant Church.”

But neither in this, nor in any of the subsequent reigns, are there any records to establish the accuracy of such a position. The only descendant, representative, or successor of the ancient British church; and the only descendant, representative, or successor of the church, which Gregory sent Augustine to plant among the Anglo-Saxons, is the present “Church of England,” and to which church, the property of the monasteries constitutionally belonged, and the only portion of church property, which the Roman Catholics can constitutionally claim, on the plea of identity of religion, is that, if any, which was given during the reign of Mary<sup>19</sup>.

It has been asserted that from the dissolution of monasteries, the system of parochial relief was rendered necessary, but such is not the fact.

There can be no doubt that, many of the impotent poor

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That which is suited to one condition of society, and to one stage of civilization, is unsuited to another.

Appropriation of monastic revenues to lay purposes, a mere robbery.

Property of the monasteries belonged to the Anglican Church; not to the Roman Catholic Church.

System of parochial relief did not originate, from the dissolution of monasteries.

but rather encouraged vagabonds and beggars, against whom laws were made, both in Edward III., King Henry VII., and this king's reign.” 1 Burnet, 344.

<sup>19</sup> Mr. Perceval states, “The Church of England of to-day is identified with the Church of England of all preceding ages, by its use of the same creeds; while the adherents to the Bishop of Rome in this kingdom are wholly distinguished from it, by the adoption of a new creed, which the Church of England at no one period of her existence ever recognised.”—Letter on the Dissenters' Petitions, London, 1834.

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During the existence of the monasteries, the scheme of a provision for the poor, had been adopted by the legislature.

derived support from their charity; but the blind eleemosynary spirit, inculcated by the Romish church, is notoriously the cause, not the cure, of beggary and wretchedness. The monastic foundations, scattered in different counties, at irregular distances, could never have answered the end of local and limited succour, meted out in just proportion to the demands of poverty. Even while the monasteries were yet standing, the scheme of a provision for the poor had been adopted by the legislature<sup>20</sup>, by means of regular collections, which, in the course of a long series of statutes, were almost insensibly converted into compulsory assessments<sup>21</sup>.

*8. The Reformation.*

Popular movements erroneously ascribed to the principal actors, as to their authors.

Popular movements have commonly been ascribed to the principal actors in them, as to their authors; but the utmost that can be accomplished by individuals, in such cases, is merely to avail themselves of the happy predisposition in the public mind, to give form and consistency to loose opinions, and to bring to the aid of an infant sect or party, the weight of talent, learning, character, and station. They may thus, as Henry VIII. did in the Reformation of the Anglican Church, strengthen and direct the current; but, if they be wise beyond their age, they must expect the just appreciation of their views from an enlightened posterity. Thus it happened with Wickliffe, to whom the first grand attempt at Reformation has been attributed; previous attempts had proved abortive;—because the times were not ripe for a change; but the merit of Wickliffe lay in seizing the favourable moment for disseminating his doctrine, as most of his principles had been anticipated by previous writers<sup>1</sup>.

Principles of Wickliffe anticipated by previous writers.

Enactments relative to probates of wills, regulating of mortuaries, plurality of benefices, and non-residence.

After the disgrace of Cardinal Wolsey, and while the cause of the king's marriage with Queen Katherine was depending, parliament was summoned, and three bills were passed, restricting the exorbitant abuses of the clergy; one was against the exactions for the probates of wills<sup>2</sup>; another was for the

<sup>20</sup> Stat. 27 Henry VIII. c. 25. 31 Henry VIII. c. 7, and Stat. therein cited.

<sup>21</sup> Stat. 1 Edward VI. c. 3. Stat. 14 Elizabeth, c. 5.

<sup>1</sup> Fox's Martyrs, 521, et seq. 1 Brodie, 48.

<sup>2</sup> Const. Ottobon. tit. 14. Lynd. 166—179. Const. Archb. Boniface, temp. Henry III. Const. Archb. Mepham, temp. Henry III. 1 Strype, 73. Stat. 31 Edward III. Stat. 1. c. 4; Stat. 3 Henry V. c. 8; Stat. 21 Henry VIII. c. 5.

regulating of mortuaries<sup>3</sup>; a third was to restrain the plurality of benefices, non-residence, and churchmen being farmers of lands<sup>4</sup>.

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Though the latter statute affected the pope's authority in matters of pluralities, non-residence, and dispensations; yet this, and the whole of these three measures, were rather regulations of a domestic nature, than attacks on the papal jurisdiction.

By this policy, the king displayed to the pope his power over the parliament, and how willingly that assembly would concur with him in hostile aggressions against the clergy. He also acquired popularity with the people, by relieving them from the oppressions of the church.

Policy of the king.

The clergy not only felt an immediate restraint and loss of present profit, but a precedent was thus obtained for future attacks, and their opposition to all reformation, increased the prejudices that were conceived against them. If moderate measures of reform had emanated from themselves, or if they had partially supported the measures of their adversaries, they would have acquired powerful partisans; but they fatally mistook their true interest, when they thought they were concerned to link with it, all abuses and corruptions.

Prejudices against the clergy.

The kings of England always claimed a power in ecclesiastical matters, equal to that, which the Roman emperors had in their empire,—they exercised this authority both over the clergy and laity; by erecting bishoprics, granting investitures in them, calling synods, and making laws about sacred as well as civil concerns.

The prerogatives of the kings of England in ecclesiastical affairs.

The bishops of Rome were enabled to extend their power, beyond either the limits of it in the primitive church, or what was afterwards granted them by the Roman emperors, and usurped an unscriptural and illegal authority over all the churches of Europe, by advancing her claims and establishing them, whenever her interests could be mixed up with the correction of the real or fancied grievances existing in church or state.

In England, the Roman See experienced considerable opposition; in gaining their improper powers of giving investitures, receiving appeals to Rome, and of sending legates to England,

The modes in which papal supremacy was established.

<sup>3</sup> Stat. 21 Henry VIII. c. 6.

<sup>4</sup> Lynd. lib. 3, tit. 5, c. 2. Ayl. Parerg. Jur. Can. 414. Stat. 21 Henry VIII. c. 13.

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and their ultimate possession of such authority, arose from every infamous advantage being taken, which the weakness or vices of our sovereigns permitted.

In the first contests between the kings and the popes, which were chiefly confined to questions respecting the temporal possessions of the church, the clergy, for increased immunity and protection, were generally on the pope's side.

The lust of power, and unchristian bigotry of the See of Rome, annihilated its authority.

When the popes became ambitious and warlike princes, they were obliged to adopt every expedient to acquire pecuniary resources. The pall, with many bulls and high compositions for them, annates or first-fruits, and tenths, were the standing taxes of the clergy, besides numerous others, in cases of emergency: so that the clergy, finding themselves thus tyrannically oppressed by the popes, ultimately had recourse to the crown for that constitutional protection, which their predecessors had selfishly and treasonably abandoned\*:—in fact, it was to the spiritual pride,—political policy,—lust of power,—and the unchristian, persecuting bigotry of the See of Rome, that the annihilation of its authority, in the reign of Henry VIII., may be ascribed.

Improper disposal of benefices to foreigners prohibited by Stat. 35 Edward I. Stat. 1 and 25 Edward III., Stat. 6.

In the reign of Edward I., parliament found it requisite to make enactments restrictive of papal exactions<sup>o</sup>.

The popes claimed and exercised a right to dispose of bishoprics, abbeys, and lesser benefices to foreigners, who did not reside in England; upon which the commonalty of the realm represented to the king in parliament, that the bishoprics, abbeys, and other benefices were founded by the kings and people of England, to inform the people of the law of God, and to make hospitality, alms, and other works of charity, for which end they were endowed by the king and people of England, and that the king and his other subjects who endowed them, were exclusively entitled upon voidances, to the presentment and collations of them, which now the pope had usurped and given to aliens, by which the crown would be disinherited, and the ends of their endowment destroyed, with other great inconveniences. Therefore it was ordained, that these oppressions should not be suffered in any manner.

\* Statute of "Provisors," 25 Edward III. Stat. 6.

No effectual process having been provided against those who violated this ordinance, these abuses still prevailed, and

<sup>s</sup> 1 Burnet, 195.

<sup>o</sup> Vide 1 Dig. Peer. 251, et seq.

which were productive of the "Statute of Provisors:" in which it was stated that, the Bishop of Rome did daily reserve to his collation, church preferments in England, and raised the first fruits, with other great profits, by which the treasure of the realm was carried out of it, and many clerks legally advanced in the realm by their true patrons, were excluded from their benefices by such provisors; therefore, the king being bound by oath to see the laws kept, did, with the assent of all the great men and the commonalty of the realm, ordain;—that the free elections, presentments, and collations of benefices should be vested in the crown and its subjects, in the same manner as they had formerly enjoyed them, notwithstanding any provisions from Rome. And if the incumbents, by virtue of such provisions, were disturbed, those provisors, or others employed by them, should be imprisoned till they made fine and ransom to the king at his will; or if they could not be apprehended, writs were to be issued to seize them, and all benefices possessed by them were to fall into the king's hands, except they were abbeys or priories, that fell to the convents or colleges.

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Free elections, presentments, and collations of benefices, vested in the crown and its subjects.

By another statute the provisors were put out of the king's protection; and if any man offended against them in person or goods, he was to be excused, and unimpeachable.

Stat. 27 Edward  
III. Stat. 1. c. 1.

In the reign of Edward III., complaint having been made of "the subject," being sued in others than the king's courts, and in parts beyond the seas, it was ordained;—that any one who sued, either beyond sea, or in any court, for things that had been sued, and about which judgment had been given in former times in the king's courts, were to be cited to answer for it in the king's courts, within two months; and if they came not, they were to be put out of the king's protection, and to forfeit their lands, goods, and chattels to the king, and to be imprisoned and ransomed at the king's will.

The subject to be cited only in the king's courts.

Stat. 38 Edward  
III. Stat. 2.

These laws having proved ineffectual, another statute was passed, by which, not only the provisors themselves, but all such as took procuratories, letters of attorney, or farms from them, were involved in the same guilt.

Extension of the Statute of Provisors.

Stat. 3 Richard  
II. c. 3.

Another artifice of the Roman court was, improperly influencing the king, and then procuring the royal license for aliens to hold benefices; but, in 7 Richard II., provisions were again made against aliens having benefices without the king's license;—and the king promised, that thenceforth he would refrain from granting such licenses.

Aliens having benefices.

Stat. 7 Richard  
II. c. 12.



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Title of incumbents confirmed by Rome.

Stat. 12 Richard II. c. 15.

Stat. 13 Richard II. Stat. 2. c. 2.

Rights of presentation only triable in the king's courts.

Evils from translations of the bishops.

Stat. 16 Richard II. c. 5.

Premunire for purchasing bulls, or other instruments from Rome or elsewhere.

The next "clerical" expedient was to prevail with the incumbents who had been presented in England according to law, to take provisions for their benefices from Rome, to confirm their titles. This was also forbidden under the former pains, and the benefice was to be considered as void.

It was only in the king's courts, that the rights of presentations could be tried and judged, and the bishops could only give institution according to the title declared in these judgments; but the popes being desirous to possess such jurisdiction, and to have all titles to advowsons tried in their courts, excommunicated those bishops, who proceeded in this matter according to the laws of England.

These practices were complained of by the commons in 16 Richard II., and also that the pope intended to make many translations of bishops, some to be within, and some out of the realm, which, among other inconveniences, would produce this effect:—That the crown of England, which had always been so free, that it hath been in no earthly subjection, but immediately subject to God in all things touching the crown, and to none other, would be subjected to the Bishop of Rome, and that the laws and statutes of the realm would be by him defeated and destroyed, which would be against the king's crown and regality; therefore all the commons resolved to live and die with him and his crown: and they required him, by way of justice, to examine all the lords, spiritual and temporal, what they thought of those things; and whether they would be with the crown to uphold the regality of it.

To which all the temporal lords answered, they would be with the crown in these cases especially; but the spiritual lords, being asked, said, they would neither deny nor affirm that the Bishop of Rome might, or might not, excommunicate bishops, or make translations of prelates: but, upon that protestation, they said that, if such things were done, they thought it was against the crown, and said they would be with the king, as they were bound by their allegiance.

Whereupon it was ordained that, if any did purchase translations, sentences of excommunication, bulls, or other instruments from the court of Rome, against the king or his crown, or whosoever brought them to England, or did receive or execute them, should be out of the king's protection, forfeit their goods and chattels to the king, and their persons imprisoned.

In 2 Henry IV., parliament complained that the Cistercian order had procured bulls to discharge them from paying tithes, and also forbidding them to let their farms to any, but to possess them themselves; to rectify which, it was declared that those bulls should be of no force, and if any did put them in execution, or procured other such bulls, they were to be proceeded against, under the statutes against "provisors."

In 6 Henry IV., complaints being made of the excessive rates of composition for archbishoprics and bishoprics in the pope's chamber, which were raised to the treble of what had been formerly paid, it was enacted that, they should pay no more than had been formerly wont to be paid.

In 7 Henry IV., the statute of the second year was confirmed; and by another act, the licenses which the king had granted for executing the pope's bulls, and any that he might grant in future, were declared to be of no force to prejudice any incumbent in his right.

The abuses and encroachments of the Roman See still increasing, all previous statutes against "provisors" were confirmed, and all elections declared free, and not to be interrupted either by the pope or the king: but, at the same time, the king pardoned those who had transgressed against these statutes.

This mistaken policy of pardoning offenders for the wilful violation of positive laws, created the necessity of another statute against "provisors" in the reign of Henry V., by which incumbents, lawfully invested in their livings, were not to be molested by provisors, though they had the king's pardon; and such bulls and licenses were declared void and of no value, and those who, upon such grounds, did molest the incumbents, were to incur the pains of the statutes against "provisors."

From the commencement of the reign of Richard II. till 4 Henry V., the popedom was weakened and distracted by schisms, and the kingdoms of Europe were divided in their obedience, some holding for those that sat at Rome, and others for the popes of Avignon: England, in opposition to France, that chiefly supported the Avignon popes, adhered to the Roman popes, and had it not been for such schisms, England would have been placed\* under excommunications and interdicts for these statutes<sup>7</sup>.

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Cistercian order  
procure bulls.  
Stat. 2 Henry IV.  
c. 4.

Excessive rates  
of composition  
for archbishop-  
rics, &c.  
Stat. 6 Henry IV.  
c. 1.

Invalidity of  
licenses to exe-  
cute the pope's  
bulls.  
Stat. 7 Henry IV.  
cc. 6, 8.

Pardon granted  
to the ecclesias-  
tics for statutable  
offences.  
Stat. 11 Henry  
IV. cc. 8, 9, 10.

Mistaken policy  
of pardoning of-  
fenders for the  
wilful violation  
of positive laws.  
Stat. 3 Henry V.  
c. 4.

See of Rome  
distracted by  
schisms.

<sup>7</sup> 1 Burnet, 199, 200.

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Treasonable impudence of Martin V.

The clergy advocate the right of the pope to grant provisions.

The church infringe the Statutes of Provisors.

The convocations pay a composition for a pardon.

Stat. 22 Henry VIII. cc. 15, 16.

The king acknowledged supreme head of the church.

Payment of annates to the court of Rome forbidden.

When the schisms were terminated, Martin V. reassumed that spirit of treasonable impudence and arrogance, for which some of his predecessors had been so eminent, and sent over threatening messages to England in order to acquire supreme authority; and thus, according to the injudicious admission of the Archbishop of Canterbury, that "he might raise much money out of England".

In 6 Henry VI., the archbishops and bishops addressed the parliament, alleging many things to prove the pope's power in granting provisions, and that it was of divine right, admonishing and requiring them to give the pope satisfaction in it, to prevent the misfortunes incident to ecclesiastical censures. But no act rescinding the "Statutes of Provisors," nor any explanation of their principles was passed, or rendered.

Thus stood the law of England, which was neither repealed nor well executed;—when, in 1531, it was urged that the whole church, having submitted to the legantine commission of Wolsey, had violated the "Statutes of Provisors," and to the equitable excuses of the convocation for having obeyed such commission, that it was procured by Henry's consent, and supported by his authority, it was answered,—the statutes were still in force, and that their ignorance of them was no excuse, because all persons were bound to know the laws; yet, although their guilt was so public, though the court had proceeded to a sentence, that they were out of the king's protection, and were liable to the penalties against provisors, the king was willing, upon a reasonable composition and a full submission, to pardon them<sup>10</sup>.

The convocations having perceived the hopelessness of their cause, threw themselves upon the mercy of the king, and agreed to pay 118,840*l.* for a pardon<sup>11</sup>; they likewise acknowledged that the "king was the protector and supreme head of the church and clergy of England,—in so far as is permitted by the law of Christ;" and promised that in future they would neither make nor execute any constitution without the king's license<sup>12</sup>.

The Stat. 23 Henry VIII., c. 33, laid the foundation of the

<sup>10</sup> Ex MSS. D. Petyt. Reg. Cichel. fol. 30. Collect. Numb. 37—40, cited in 1 Burnet, 200—204.

<sup>11</sup> Antiq. Brit. Eccles. 325. 1 Butler, Hist. Rom. Cath. 157.

<sup>12</sup> 13 Rymer, 734. 14 Ibid. 18. 1 Burnet, 204, 205.

<sup>11</sup> Holingshed, 293.

<sup>12</sup> Antiquit. Britanniae in vita Warham. 4 Lingard, 180.

breach which afterwards followed with Rome, which prohibited<sup>13</sup> the payment of *annates*, or first fruits, being a year's rent of all the English bishoprics that fell vacant, to the papal see.

This statute recited, that great sums of money had been conveyed out of the kingdom, under the title of annates or first fruits, to the court of Rome, which were extorted by restraint of bulls and other writs; that persons who had advanced such sums were frequently ruined by the premature deaths of archbishops and bishops, because *annates* being founded on no law, there was no way of obliging the incumbents of sees to pay them, but by restraining their bulls; that annates were first paid to defend Christendom against infidels, but were now turned to a duty, claimed by the court of Rome against all right and conscience, and vast sums were carried away upon that account, which, from the second year of Henry VII. to the then present time, amounted to 800,000 ducats, besides many other heavy exactions of that court; and that the king was bound by his duty to Almighty God, as a good Christian prince, to hinder these oppressions. And, also, because many of the prelates were then very aged, and very likely to die in a short time, whereby vast sums of money would be carried out of England to the impoverishment of the kingdom.

It was therefore enacted that, all payments of first fruits to the court of Rome should be put down, and for ever restrained, under the pains of the forfeiture of the lands, goods, and chattels of him that should pay them any more, together with the profits of his see during the time that he was vested with it. That in case bulls were restrained in the court of Rome, any person presented to a bishopric was to be notwithstanding consecrated, by the archbishop of the province, or if he were presented to an archbishopric, by any two bishops in the kingdom, whom the king should appoint for that end; and that, being so consecrated, they should be invested and enjoy all the rights of their sees: yet, that the pope and court of Rome might have no just cause of complaint, the persons presented to bishoprics, should be allowed to pay them five *per cent.* of the clear profits and revenues of their several sees.

The parliament, unwilling to go to extremities, remitted the final ordering of this statute to the king, so that if the

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Stat. 23 Henry  
VIII. c. 33.

Evils which had  
arisen from the  
payment of an-  
nates.

Consecration of  
bishops without  
the pope's bull.

Stat. 23 Henry  
VIII. c. 33.  
passed de bene  
case.

<sup>13</sup> 1 Burnet, 214; et Collect. Numb. 41. 1 Strype, 144.

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pope should either charitably and reasonably put down the payment of *annates*, or so moderate them that they might be a tolerable burden, the king might at any time before Easter, 1533, or before the then next session of parliament, declare by his letters patent, whether this proposed statute, or any part of it, should be observed or not, which determination might possess the force and authority of a law. And that if, upon this statute, the pope should vex the king, or any of his subjects, by excommunication or other censures, the king might then cause the sacraments and other rites of the church to be administered, and that none of the papal censures need be published or executed. Accordingly the king, in a few months after the passing of these ordinances, ratified them by letters patent, by which they became the law of the land.

Appellate jurisdiction taken from Rome.

Stat. 24 Henry VIII. c. 12.

The breach with the See of Rome was expedited by Stat. 24 Henry VIII., c. 12, which deprived that court of its appellate jurisdiction: the preamble stating, that the crown of England was imperial, and the nation a complete body within itself, with a plenary and pre-eminent power to give justice in all cases, spiritual as well as temporal: and that in the spirituality, usually called the English church, as there had been at all times, so there were then, men of that sufficiency and integrity, that they might declare and determine all doubts within the kingdom ecclesiastical; and that several kings, as Edward I., Edward III., Richard II., and Henry IV., had, by several laws, preserved the liberties of the realm, both spiritual and temporal, from the annoyance of the See of Rome, and other foreign potentates; yet many inconveniences had arisen by appeals to the See of Rome in causes testamentary, matrimony, divorces, right of tithes, and other cases, which were not sufficiently provided against, by such laws; by which, not only the king and his subjects were put to great charges, but justice was much delayed, Rome being at such a distance, that evidences could not be brought thither, nor witnesses, so easily as within the kingdom.

All causes relating to the king or his subjects, to be determined within the kingdom.

Therefore it was enacted, that all such causes, whether relating to the king or any of his subjects, were to be determined within the kingdom, in the several courts to which they belonged, notwithstanding any appeals to Rome, or inhibitions and bulls from Rome; and that their sentences should take effect, and be fully executed by all inferior ministers: that if any spiritual persons refused to execute such

sentences because of censures from Rome, they were to suffer a year's imprisonment, and fine and ransom at the king's will; and if any persons in the king's dominions procured or executed any process or censures from Rome, they were declared liable to the pains in the Statute of *Provisors*, in 16 Richard II. c. 5. That appeals should only be from the archdeacon or his official to the bishop of the diocese or his commissary, and from him to the archbishop of the province, or the dean of the Arches, where the final determination was to be made without any further process; and in every process concerning the king, or his heirs and successors, an appeal should lie to the upper house of convocation, where it should be finally determined, never to be again called in question.

This statute acquired great popularity, as appeals were esteemed dishonourable to the kingdom, by subjecting it to a foreign and tyrannical jurisdiction; and found to be very vexatious from their expense, injustice, and delay.

The foregoing enactments having prepared the nation for increased innovations, and having essentially restricted the power and profits of Rome, the foundations of the papal authority were next examined.

By the creed of Pius IV., all communicants in the church of Rome are required to acknowledge, as part of that "faith without which no one can be saved," "the holy Catholic apostolic *Roman* church, for the mother and mistress of all churches."

But the fathers that were assembled in the second general council<sup>14</sup>, Constantinople, A.D. 381, gave the title which is thus claimed for Rome, to the church of Jerusalem, as appears from their synodical epistle,—“We acknowledge the most véné-

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Stat. 16 Richard  
II. c. 5.

Appeals to Rome  
esteemed disho-  
nourable to the  
Kingdom.

Foundations of  
the papal autho-  
rity.

SUPREMACY OF  
THE CHURCH OF  
ROME. AN ARTI-  
CLE OF FAITH.

Second general  
council, Constan-  
tinople, A.D. 381.

<sup>14</sup> There are twenty councils which the Roman writers consider “general,” but of these only six are so acknowledged by the Church of England. These are: 1. Nice, A.D. 325; 2. Constantinople, A.D. 381; 3. Ephesus, A.D. 431; 4. Chalcedon, A.D. 451; 5. Constantinople, A.D. 553; 6. Constantinople, A.D. 680. This last is remarkable as being that which condemned Honorius, the Roman pontiff, of heresy, and ordered his books to be burned.

The others which are received by Rome, and, with the exception of the seventh, by Rome *only*, as general, are: 7. Second Nicene, A.D. 787 (the decrees concerning image worship were made at this council);—8. Constantinople, A.D. 869; 9. Lateran, A.D. 1123; 10. Lateran, A.D. 1139; 11. Lateran, A.D. 1179; 12. Lateran, A.D. 1215; 13. Lyons, A.D. 1274; 14. Lyons, A.D. 1274; 15. Vienne, A.D. 1311; 16. Constance, A.D. 1414; 17. Basle, A.D. 1431; 18. Florence, A.D. 1438; 19. Lateran, A.D. 1512; 20. Trent, A.D. 1545.

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Rights of independent churches preserved.

able Cyril, most beloved of God, to be bishop of the church of *Jerusalem*, which is the mother of all churches<sup>15</sup>.”

The patriarch of Antioch having usurped an authority over the churches of the island of Cyprus, which had never been under his jurisdiction, occasioned the following decree<sup>16</sup> by the third general council, which was assembled at Ephesus, A.D. 431,—“ That none of the bishops, beloved of God, take another province which has not been formerly, and from the beginning, subject to him. But, if any one has taken another, and by force has placed it under his control, he shall restore it; that the canons of the fathers be not transgressed, nor the pride of worldly power be introduced under the cloak of the priesthood, nor we by degrees come to lose that liberty, wherewith our Lord Jesus Christ, the deliverer of all men, has endowed us by his own blood. It seemed good, therefore, to the holy and general synod, that the proper rights of each province, which have before time from the beginning, by ancient custom, belonged to it, be preserved to it pure and inviolate.”

All authority which Rome acquired in England, was *usurped*.

These facts are indisputable; that, in 431, the Anglican church had never acknowledged any subjection to the See of Rome, and that it had never been claimed by the latter power:—consequently, all the authority which Rome subsequently acquired in England, was in direct violation of this unrevoked decree.

Roman supremacy first acknowledged by the fourth council of Lateran, A.D. 1215.

The fourth Lateran is the first of those called general councils, which recognised Roman supremacy. In the fifth canon the Roman church is said to have “ the principality of power over all others, as being the mother and mistress of all Christ’s faithful people;” and all other patriarchs are required to receive their palls from the Roman pontiff. The titles of Universal Pope, and Universal Patriarch, first used by the bishops of Constantinople, and afterwards applied indifferently to the bishops of Rome and Constantinople, as appears by the Letters of the Emperor Constantine Pogonatus<sup>17</sup>, were titles of honour, and did not imply universal authority, power, and jurisdiction; in fact, there was no allusion to this supremacy in any general council, previous to A.D. 1215<sup>18</sup>.

<sup>15</sup> Concil ii. 966.

<sup>16</sup> Act 7, Concil iii. 802.

<sup>17</sup> Labbe and Cossart, tom. vi. 593, 599.

<sup>18</sup> Perceval’s Hist. Not. 16, 17; vide etiam I. Nice, Canon IV., VI. IV. Chalcedon, Canon IX., XXII., XXVIII. IV. Lateran, Canon IV. Florence, Sessio XXV.

It was declared in parliament and convocation<sup>19</sup>, that there was no ground for the pope's power in Scripture, all the apostles being made equal by Christ<sup>20</sup>, when he committed the church to their care in common, and who often declared there was no superiority of one above another. St. Jerome, who only equalled the bishops of Rome to those of Eugubium and Constantinople, and many other authorities, were cited from the fathers to show that, they did not look on the bishops of Rome, as superior to other bishops, and that those passages of Scripture were not interpreted by them in the sense, which was subsequently contended for, in order to support the supremacy of Rome.

For the places brought from Scripture in favour of the papacy, they judged that they did not provide anything for it. That *Thou art Peter, and upon this rock will I build my church*, if it prove anything in this matter, would prove too much; even that the church was founded on St. Peter, as he was a private person, and so on the popes in their personal capacity. But both St. Ambrose, St. Jerome, and St. Austin think, that by the *rock*, the confession he had made was only to be meant. Others of the fathers thought, by the *rock*, Christ himself was meant, who is the only true foundation of the church; though, in another sense, all the apostles are also called foundations by St. Paul. That *Tell the church* is thought by Gerson and Æneas Silvius (afterwards Pius II.), rather to make against the pope, and for a general council. And the fathers have generally followed St. Chrysostom and St. Austin, who thought, that *the giving of the keys of the kingdom of Heaven*, and the charge, *Feed my sheep*, were addressed to St. Peter, on behalf of all the rest of the apostles. And that, *I have prayed for thee, that thy faith fail not*, was only personal, and related to his fall, which was then imminent. It is also clear, by St. Paul, that every apostle had his peculiar province, beyond which he was not to stretch himself; and St. Peter's province was the circumcision, and his the uncircumcision; in which he plainly declares his equality with him.

The contests of Rome with other sees, were cited to prove, that ecclesiastical privileges were only founded on the practice and canons of the church, and not upon any divine warrant:—thus Constantinople pretended to equal privileges with Rome,

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No authority for the pope's supremacy in Scripture, all the apostles being made equal by Christ.

"Thou art Peter, and upon this rock will I build my church."

The giving of the keys of the kingdom of Heaven, and the charge, "Feed my sheep," not exclusively addressed to St. Peter.

Ecclesiastical privileges founded on the practice and canons of the church.

<sup>19</sup> 1 Burnet, 251, et seq. passim.

<sup>20</sup> Mark xvi. 15.



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but Ravenna, Milan, and Aquileia pretended to patriarchal dignities and exemptions.

Some Archbishops of Canterbury, Laurence, Dunstan, and Robert Grostest, Bishop of Lincoln, had frequently asserted, that the popes could do nothing against the laws of the church, and which doctrine had been recognised by popes of Rome.

No papal constitution is binding in any church, except it be received by it.

Even to this day no constitution of the popes is binding in any church, except it be received by it; and in the daily practice of the canon law, the customs of churches are pleaded against papal constitutions; which establish their authority cannot be from God, otherwise all must submit to their laws. And from the contests respecting investitures, receiving appeals, admitting of legates, and papal constitutions, it is apparent that, the papal authority was a tyranny, which had been managed by cruel and fraudulent arts, and had never been received in the church, than as a conquest, to which they were constrained to yield.

Arguments for the king's supremacy, derived from the Old Testament.

As for the king's power over spiritual persons, and in spiritual causes, Scripture is replete with authorities. In the Old Testament the kings of Israel intermeddled in all matters ecclesiastical. Samuel, though he had been a judge, yet acknowledged Saul's authority: so also did Ahimelech, the high-priest, and appeared before him when cited to answer upon an accusation. And Samuel<sup>21</sup> says, *he was made the head of all the tribes*. Aaron, in that, was an example to all the following high-priests, who submitted to Moses. David made many laws about sacred things, such as, the order of the courses of the priests, and their worship: and when he was dying, he declared to Solomon how far his authority extended. He told him<sup>22</sup>, that the courses of the priests, and all the people, were to be wholly at his commandment: pursuant to which, Solomon<sup>23</sup> did appoint them their charges in the service of God, and both the priests and Levites departed not from his commandment in any matter: and though he had turned out Abiathar from the high-priesthood, yet they made no opposition. Jehoshaphat, Hezekiah, and Josias made likewise laws about ecclesiastical matters.

Arguments for the supremacy of the crown derived from the New Testament.

In the New Testament, Christ himself was obedient; he paid taxes, he declared that he pretended to no earthly king-

<sup>21</sup> 1 Sam. xv. 18.

<sup>22</sup> 2 Chron. viii. 14, 15.

<sup>23</sup> 1 Chron. xxviii. 21.

dom, he charged the people to render to Cæsar the things that were Cæsar's, and his disciples not to affect temporal dominion, as the lords of the nations did. And though the magistrates were then heathens, yet the apostles wrote to the churches to obey magistrates, to submit to them, to pay taxes; they call the king supreme, and say he is God's minister to encourage them that do well, and to punish the evil doers, which is said of all persons without exception, and every soul is charged to be subject to the higher power.

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In the primitive church, the bishops in their councils, made rules for ordering their dioceses, which they only called *canons* or *rules*; nor had they any compulsive authority, but what was derived from the civil sanctions.

Canons of the primitive church.

After the emperors were Christians, they made many laws about sacred things, as may be seen in the codes; and when Justinian digested the Roman law, he added many novel constitutions about ecclesiastical persons and causes. The emperors called general councils, presided in them, and confirmed them.

Justinian added many novel constitutions respecting ecclesiastical persons and causes.

Many letters have been written by popes to emperors, to call councils, and of the councils to them to confirm their decrees. The election of the popes themselves was sometimes made by the emperors, and sometimes confirmed by them. Pope Hadrian, in a synod, decreed, that the emperor should choose the pope; and it was an unheard-of thing, before the days of Gregory VII., for popes to depose princes, and give away their dominions: and which can only be compared to the pride of Antichrist and Lucifer.

Election of the popes sometimes made by the emperors.

It is also clear, that under a monarchy, there can be but one supreme; and that the king being supreme over all his subjects, clergymen must be included; for they are still "subjects." Nor can their being in orders change that former relation, founded upon natural and national law, no more than wives or servants, who, by becoming Christians, were not, according to the doctrine of the apostles, discharged from the duties of their former relations.

In a monarchy, the king is supreme over all his subjects.

In England, the kings always assumed a supremacy in ecclesiastical matters. In Pope Eleutherius' letter to King Lucius, he is twice called by him God's vicar in his kingdom; and that it belonged to his office to bring his subjects to the holy church, and to maintain, protect, and govern them in it.

Kings of England always had a right to exercise supremacy in ecclesiastical matters.

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The laws of Canute, Ethelred, Edmund, Edgar, Athelstan, and Ina also prove the supremacy of the Witen-Gemot; the rejection of papal supremacy<sup>24</sup> by William I., the statutes against appeals to Rome, and bishops going out of the kingdom without the king's consent; the Articles of Clarendon, and the contests that followed between Henry II. and Becket, also prove the independence of the Church of England.

Division of  
bishoprics, and  
conversion of  
benefices.

Although a bishop's pastoral care be of divine institution, yet the kings of England anciently divided bishoprics as they pleased; they also converted benefices from the institution of the founders, and gave them, as Edgar did, to cloisters and monasteries;—all which was done by the consent of their clergy and nobility, without dependance on Rome: they likewise granted these houses exemption from episcopal jurisdiction: thus Ina exempted Glastonbury, and Offa St. Albans, from their bishops' visitation: and which continued until William I.; for he, to perpetuate the memory of the victory he obtained over Harold, and to endear himself to the clergy, founded Battle Abbey; and in the charter stated, "It shall be also free and quiet for ever from all subjection to bishops, or the dominion of any other persons, as Christ's Church, in Canterbury, is."

Enactment of  
ecclesiastical  
laws by the  
crown.

Alfred's laws, a speech of Edgar, with several letters written to the popes from the kings, the parliaments, and the clergy of England; show that the crown always made laws about sacred matters, and that its power extended over the persons of churchmen, as well as to its other subjects.

The king's supremacy qualified.

But the power of the king to make laws for restraining and coercing his subjects in spiritual affairs was restricted; being only empowered to defend the faith of Christ and his religion, to maintain the true doctrine of Christ and its preachers, to abolish abuses, heresies, and idolatries; and to punish with corporal pains those who offended. And, finally, to oversee and cause that the bishops and priests faithfully executed their pastoral office, in those points, which by Christ and his apostles, were given and committed to them; and in case they were negligent in executing the same, to admonish them. And if they obstinately withstood this monition, then he could deprive them of their offices.

Divine commands upon the clergy, to obey the temporal prince.

It is also evident that God had commanded the bishops and priests to obey, with all humbleness and reverence, both kings,

<sup>24</sup> Vide ante, 11, 12, 29, 30, 44—46.

and princes, and governors, and all their laws, not being contrary to the laws of God, whatsoever they be: and that not, only *propter iram*, but also *propter conscientiam*, that is to say, not only for fear of punishment, but also for discharge of conscience.

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Thus, obedience was not required to the king's law, if contrary to the law of God: and the ecclesiastical jurisdiction, in the discharge of the pastoral office, committed to the pastors of the church, by Christ and his apostles, is acknowledged<sup>25</sup>.

The necessity of  
extirpating the  
pope's power.

Upon these principles and facts the parliament and convocation, resolved, that the pope's power in England had no good foundation, and had been managed with as much tyranny, as it had begun with *usurpation*;—that the exactions of Rome had been everywhere oppressive, but in no place so intolerable as England;—which, though productive of complaints during the then preceding three hundred years, yet no relief had been acquired;—that the laws respecting provisors had been defeated, and made ineffectual;—that, therefore, no other effectual remedy existed but to extirpate this pretended authority, and thenceforth to acknowledge the pope only as bishop of Rome, with the *jurisdiction defined by the ancient canons*: and for the king to REASSUME his own authority, and the prerogatives of his crown, from which the kings of England *had never formally departed*, though they had, for a century, connived at an invasion and usurpation upon them, which was no longer to be endured, and the result was, that, in 25 Henry VIII., three statutes were enacted, by which the pope's authority was destroyed.

The king called  
upon to *reassume*  
his ecclesiastical  
jurisdiction.

In the first statute, the clergy in convocation, acknowledged that all convocations had been, and ought to be, assembled by the king's writ; and promised, *in verbo sacerdotii*, that they would never make nor execute any new canons or constitutions, without the royal assent; and since many canons had been received, that were prejudicial to the king's prerogative, and also contrary to the law of the land, and heavy to the subject, it was ordained; there should be a committee of thirty-two persons, composed of sixteen members of the two houses of parliament, and the like number of the clergy, to be named by the king, who should have full power, with the king's assent, to abrogate or confirm canons, as they thought expedient. Appeals to Rome were again condemned, and all appeals were directed to

Submission of  
the clergy.  
Stat. 25 Henry  
VIII. c. 19.

Appeals to Rome  
again con-  
demned.

<sup>25</sup> 1 Burnet, 261, 262.

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Delegates.Foundation of  
the practice of  
the ecclesiastical  
courts.Payment of first-  
fruits.Stat. 25 Henry  
VIII. c. 20.Election and  
consecration of  
bishops.Dispensations  
and licenses.Bishops to do  
homage to the  
crown.England released  
from dependance  
on the Papal See.Stat. 25 Henry  
VIII. c. 21.

be made, according to Stat. 24 Henry VIII. c. 12, excepting an appeal being given from the archbishop's court, and from places exempt, to the king in chancery; upon which a commission was to be directed to such persons as the king should name, as in cases of appeals from the admiral's court; and this court of appeal has since been called, the Court of Delegates<sup>26</sup>.

Until the reformation of the ecclesiastical law had been executed, it was declared, that such canons, constitutions, ordinances, and synodals provincial, being already made, and not repugnant to the laws, statutes, and customs of the realm, nor to the hurt of the king's prerogative, should be used and executed as before, upon which saving, and the former usage of the kingdom, depends the present practice of the ecclesiastical courts; as the designed reformation of that law has never been effected<sup>27</sup>.

The Stat. 25 Henry VIII. c. 20, after confirming the former statute concerning the non-payment of *first-fruits*: enacts that bishops were no longer to be presented to the See of Rome, nor to sue out any more bulls there; but that all bishops should be presented to the archbishop, and an archbishop to the other archbishop, or to any four bishops whom the king should name.

When any see was vacant, the king was to grant a license, or *congè d' elire*, to the dean and chapter to proceed to a new election, and therewith to send a letter missive, containing the name of the person whom they were to elect; and if the election was delayed for twelve days, the king was to nominate by letters patent.

The person elected or nominated was to swear fealty to the king, and a commission was to issue for consecration and investiture; after this, he was to do homage to the king, and to be put in possession of the spiritualities and temporalities. The dean and chapter, or the bishop or archbishop, neglecting, for twenty days, to perform their offices, as thus prescribed, were subjected to the penalty of a *præmunire*.

Next follows the celebrated Stat. 25 Henry VIII. c. 21, for discharging the subject from all dependance on the papal see. In the preamble, the intolerable exactions for Peter-pence, provisions, pensions, and bulls of all sorts, are complained of, and described as contrary to law,—being grounded only on the pope's power of dispensing, which was usurped. The king, and the lords and commons, are then stated to be the only

<sup>26</sup> 2 Collier, 69, 70.<sup>27</sup> 1 Reeves, 213, 214.

power to consider, how any of the laws were to be dispensed with or abrogated; and as the king had been acknowledged the supreme head of the Church of England, by the prelates and clergy in their convocations; it was therefore enacted; that all payments made to the apostolic chamber, and all provisions, bulls, or dispensations, should from thenceforth cease; but that all dispensations or licenses for things that were not contrary to the law of God, but only to the law of the land, should be granted within the kingdom, by and under the seals of the two archbishops in their several provinces; who should not grant any licenses contrary to the laws of Almighty God, and only such as had been accustomed to be granted, and should give no license for any new thing, till it were first examined by the king and his council, whether such things might be dispensed with; and that all dispensations which were formerly taxed at or above 4*l.* should be confirmed under the Great Seal.

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Parliament the only power to consider how any of the laws were to be dispensed with or abrogated.

Dispensations or licenses to be granted by the archbishops.

It was also declared that, Parliament did NOT THEREBY INTEND TO VARY FROM CHRIST'S CHURCH IN ANY THINGS CONCERNING THE VERY ARTICLES OF THE CATHOLIC FAITH OF CHRISTENDOM, OR IN ANY OTHER THINGS DECLARED BY HOLY SCRIPTURE, AND THE WORD OF GOD, NECESSARY FOR THEIR SALVATION. That the monasteries, as formerly granted by the bishop of Rome, should be exempted from the archbishop's visitations; but that such abbeyes, whose elections were formerly confirmed by the pope, should, in future, be confirmed by the king, and who might issue a commission under his Great Seal for visiting them. That licenses and other writs obtained from Rome before March 12, in that year, should be valid and in force, except such as were contrary to the laws of the realm; and that the king and his council, should have power to order and reform all indulgences and privileges (or the abuses of them) which had been granted by the See of Rome: and the offenders against this act, were to be punished according to the statutes of provisors and prebendary.

The articles of the Catholic faith of Christendom to be unchanged.

Visitation of the monasteries.

The king and council to reform all indulgences and privileges.

The king's supremacy was directly established by Stat. 26 Henry VIII. c. 1, by which the crown was to be taken, as the only supreme head in earth of the Church of England, called "Anglicana Ecclesia," and to have all authority thereto annexed, for the reformation and correction of all errors, heresies, and abuses, which could be amended by any spiritual jurisdiction whatsoever.

The king's supremacy.  
Stat. 26 Henry VIII. c. 1.

The last essential attack upon the papal power was Stat. 28

**HENRY VIII.  
1509—1547.**

All ordinances  
from the See of  
Rome declared  
illegal.

Stat. 28 Henry  
VIII. c. 16.

See of Rome  
ruined by the  
excess of its  
acquisitions.

The nation re-  
joice at being  
released from  
Rome.

THE ARTICLES OF  
FAITH, A.D. 1536.

The Bible and  
the three Creeds.

Baptism, a sacra-  
ment instituted  
by Christ for the  
remission of sins.

Henry VIII. c. 16, which declares all bulls, briefs, faculties, and dispensations, of what kind soever, heretofore granted from the See of Rome, to be void, and of no effect.

As this statute was only levelled at the many jurisdictions, privileges, and exemptions that were claimed in different parts of the kingdom, under the sanction of papal grants,—a proviso was affixed, by which all marriages celebrated by virtue of the papal authority, that were not otherwise contrary to the law of God, should be legal; and all consecrations of bishops, by virtue of such authority, were confirmed. And for the future, all who enjoyed any privileges by bulls, were to bring them into chancery, or to such persons as the king should appoint. And the Archbishop of Canterbury was to grant anew the effects contained in them, which grant was to pass under the Great Seal, and to be of full force in law.

Thus the authority of the See of Rome, like all exorbitant power, was ruined by the excess of its acquisitions, and by stretching its pretensions beyond, what it was possible for any human principles or prepossessions to sustain<sup>28</sup>.

The nation generally rejoiced at these legislative enactments, not alone because the pope's usurped power was extirpated, by which human reason, policy, and industry, had so long been shackled, but because they anticipated that the "Catholic" faith, which would ultimately be adhered to, would be exclusively derived from those things which the Scriptures declared necessary to salvation.

In 1536, a convocation assembled in order to settle "articles of faith," at which the following were authorized<sup>29</sup>; but they contain many of the tenets of Romanism, which, from a closer examination of Scripture, and under the exercise of an unfettered liberty of judgment, were ultimately discarded as erroneous.

First, All bishops and preachers were required to instruct the people to believe the whole Bible and the three Creeds; that made by the Apostles, the Nicene, and the Athanasian; and interpret all things according to them, and in the very same words, and condemn all heresies contrary to them, particularly those condemned by the first four general councils.

Secondly, of Baptism. That it was a sacrament instituted by Christ for the remission of sins, without which none could

<sup>28</sup> 4 Hume, 121.

<sup>29</sup> 1 Burnet, 391. Lloyd's Form. Oxf. 1835. Laurence's Bampton Lectures, 14, 189—Wilk. Conc. iii. 87.

attain everlasting life; and that, not only those of full age, but infants, may and must be baptized for the pardon of original sin, and obtaining the gift of the Holy Ghost, by which they became the sons of God. That none baptized ought to be baptized again. That the opinions of the Anabaptists and Pelagians were detestable heresies, and that those of ripe age, who desired baptism, must with it join repentance and contrition for their sins, with a firm belief of the articles of the faith.

HENRY VIII.  
1509—1547.

Thirdly, concerning Penance. That it was instituted by Christ, and was absolutely necessary to salvation. That it consisted of contrition, confession, and amendment of life; with exterior works of charity, which were the worthy fruits of penance. For contrition, it was an inward shame and sorrow for sin, because it is an offence to God, which provokes his displeasure. To this must be joined a faith of the mercy and goodness of God, whereby the penitent must hope that God will forgive him, and repute him justified, and of the number of his elect children, not for the worthiness of any merit or work done by him, but for the only merits of the blood and passion of our Saviour Jesus Christ.

Penance, instituted by Christ and necessary for salvation.

That this faith is got and confirmed by the application of the promises of the gospel, and the use of the sacraments; and for that end, confession to a priest is necessary, if it may be had, whose absolution was instituted by Christ to apply the promises of God's grace to the penitent; therefore the people were to be taught, that the absolution is spoken by an authority given, by Christ in the gospel, to the priest, and must be believed, as if it were spoken by God himself, according to our Saviour's words; and therefore none were to condemn auricular confession, but use it for the comfort of their consciences.

Auricular confession, to be used for the comfort of consciences.

The people were also to be instructed, that though God pardoned sin only for the satisfaction of Christ, yet they must bring forth the fruits of penance, prayer, fasting, alms'-deeds, with restitution and satisfaction for wrongs done to others, with other works of mercy and charity, and obedience to God's commandments, else they could not be saved; and that, by doing these, they would both obtain everlasting life, and mitigation of their afflictions in this present life, according to the Scriptures.

Restitution, and satisfaction for wrongs.

Fourthly, as touching the Sacrament of the Altar. That

Sacrament of the altar.



**HENRY VIII.  
1509—1547.**

under the forms of bread and wine, there was truly and substantially given the very same body of Christ that was born of the Virgin Mary; and therefore it was to be received with all reverence, every one duly examining himself, according to the words of St. Paul.

Justification  
signifieth the  
remission of sin.

Fifthly. That justification signifieth the remission of sins, and acceptation into the favour of God; that is to say, a perfect renovation in Christ. To the attaining which, they were to have contrition, faith, charity, which were both to concur in it, and follow it; and that the good works necessary to salvation, were not only outward civil works, but the inward motions and graces of God's Holy Spirit, to dread, fear, and love him, and to have firm confidence in God, to call upon him, and to have patience in all adversities, to hate sin, and have purposes and wills not to sin again: with such other motions and virtues, consenting and agreeable to the law of God.

Images to stand  
in the churches.

The other articles were about the ceremonies of the church. First, of Images. That the use of them was warranted by the Scriptures, and that they served to represent to them good examples, and to stir up devotion: and therefore it was meet that they should stand in the churches. But that the people might not fall into such superstition as it was thought they had done in time past, they were to be taught to reform such abuses, lest idolatry might ensue; and that in censuring, kneeling, offering, or worshipping them, the people were to be instructed not to do it to the image, but to God and his honour.

Honouring of  
saints.

Secondly, for the honouring of Saints. They were not to think to attain these things at their hands, which were only obtained of God; but that they were to honour them as persons now in glory, to praise God for them, and imitate their virtues, and not fear to die for the truth, as many of them had done.

Praying to  
saints.

Thirdly, for praying to Saints. That it was good to pray to them, to pray for and with us. And, to correct all superstitious abuses in this matter, they were to keep the days appointed by the church for their memories, unless the king should lessen the number of them, which, if he did, it was to be obeyed.

Religious cere-  
monies to be  
preserved as good  
and laudable,  
having mystical  
significations.

Fourthly, of Ceremonies. That they were not to be condemned and cast away, but to be kept as good and laudable, having mystical significations in them, and being useful in lifting up our minds to God. Such were the vestments in

the worship of God; the sprinkling holy water, put us in mind of our baptism and the blood of Christ; giving holy bread, in sign of our union in Christ, and to remember us of the sacrament; bearing candles on Candlemas day, in remembrance that Christ was the spiritual light; giving ashes on Ash Wednesday, to put us in mind of penance, and of our mortality; bearing palms on Palm Sunday, to show our desire to receive Christ in our hearts, as he entered into Jerusalem; creeping to the cross on Good Friday, and kissing it in memory of his death, with the setting up the sepulchre on that day; the hallowing the font, and other exorcisms and benedictions.

And lastly, as to Purgatory. They were to declare it good and charitable to pray for the souls departed, which was said to have continued in the church from the beginning; and therefore the people were to be instructed, that it consisted well with the due order of charity to pray for them, and to make others pray for them, in masses and exequies, and to give alms to them for that end. But since the place they were in, and the pains they suffered, were uncertain by the Scripture, we ought to remit them wholly to God's mercy; therefore all these abuses were to be put away, which, under the pretence of purgatory, had been advanced as if the pope's pardons did deliver souls out of it, or masses said in certain places, or before certain images, had such efficiency; with other such like abuses<sup>30</sup>.

**HENRY VIII.**  
**1509—1547.**

Prayers for souls departed declared to be good and charitable.

Shortly after these articles had been published, religious injunctions<sup>31</sup> were issued by Cromwell, as vicegerent, to the following effect:—

THE RELIGIOUS  
INJUNCTIONS  
PUBLISHED BY  
CROMWELL IN  
1536.

First, All ecclesiastical incumbents were for a quarter of a year after this period, once every Sunday, and ever after that, twice every quarter, to publish to the people, that the Bishop of Rome's usurped power had no ground in the law of God; and therefore was on good reasons abolished in this kingdom; and that the king's power was, by the laws of God, supreme over all persons in his dominions. And they were to do their uttermost endeavour to extirpate the pope's authority, and to establish the king's.

Secondly, They were to declare the articles lately published, and agreed to by the convocation; and to make the

Publication of the recent articles.

<sup>30</sup> Wilk. Con. iii. 804—808, 817—823. 4 Lingard, 267.

<sup>31</sup> 1 Burnet, 409. Regist. Craun. fol. 97, B.

**HENRY VIII.  
1509—1547.**Abrogation of  
superfluous holy-  
days.Superstitious  
images or relics.Religious in-  
struction.Sacraments and  
sacramentals to  
be reverently  
administered.Improper amuse-  
ments discour-  
aged.

Giving of alms.

Instruction of  
youth.

people know which of them were articles of faith, and which of them rules for the decent and politic order of the church.

Thirdly, They were to declare the articles lately set forth for the abrogation of some superfluous holydays, particularly in harvest time.

Fourthly, They were no more to extol images or relics, for superstition or gain; nor to exhort people to make pilgrimages, as if blessings and good things were to be obtained of this or that saint or image. But instead of that, the people were to be instructed to apply themselves to the keeping of God's commandments, and doing works of charity; and to believe that God was better served by them when they stayed at home and provided for their families, than when they went pilgrimages; and that the monies laid out on these were better given to the poor.

Fifthly, They were to exhort the people to teach their children the Lord's Prayer, the Creed, and the Ten Commandments, in English: and every incumbent was to explain these, one article a day, till the people were instructed in them. And to take great care that all children were bred up to some trade or way of living.

Sixthly, They were to take care that, the sacraments and sacramentals were reverently administered in their parishes; from which, when at any time they were absent, they were to commit the cure to the learned and expert curate, who might instruct the people in wholesome doctrine; that they might also see their pastors did not pursue their own profits or interests so much as the glory of God, and the good of the souls under their cure.

Seventhly, They were not, except on urgent occasions, to go to taverns or ale-houses; nor sit too long at any sort of games after their meals, but give themselves up to the study of the Scripture, or some other honest exercise; and remember that they must excel others in purity of life, and be examples to all others to live well and Christianly.

Eighthly, Because the goods of the church were the goods of the poor, every beneficed person that had twenty pounds or above, and did not reside, was yearly to distribute the fortieth part of his benefice to the poor of the parish.

Ninthly, Every incumbent that had a hundred pounds a year, was to give an exhibition for one scholar at some grammar-school or university; who, after he had completed his studies,

was to be partner of the cure and charge, both in preaching and other duties: and so many hundred pounds as any had, so many students he was to breed up.

Tenthly, Where parsonage or vicarage-houses were in great decay, the incumbent was every year to give a fifth part of his profits to the repairing of them; till they were finished, and then to maintain them in the state they were in.

Eleventhly, All these injunctions were to be observed, under pain of suspension and sequestration of the mesne profits till they were observed.

In 1537, the convocation were ordered "to set forth a plain and sincere exposition of doctrine;" and accordingly a work was published, entitled, "The Godly and Pious Institution of a Christian Man," and pronounced by the convocation to accord "in all things with the very true meaning of Scripture<sup>32</sup>."

It explains in succession the Creed, the Seven Sacraments, (which it divides into three of a higher, and four of a lower order,) the Ten Commandments, the Pater Noster and Ave Maria, Justification, and Purgatory.

It refuses salvation to all persons out of the pale of the Catholic church, denies the supremacy of the pontiff, and inculcates passive obedience to the king. It teaches that no cause whatever, can authorize the subject to draw the sword against his prince; that sovereigns are accountable to God alone; and that the only remedy against oppression is to pray that God would change the heart of the despot, and induce him to make a right use of his power.

In 1215, it was enacted by the Lateran council, "Because in most parts there are within the same state or diocese people of different languages mixed together, having, under one faith various rites and customs: we distinctly charge, that the bishops of these states or dioceses provide proper persons to celebrate the divine offices, and administer the sacraments of the church, according to the differences of rites and languages, instructing them both by word and by example<sup>33</sup>."

The ecclesiastical reformers not only relied upon these Roman Catholic canons, but asserted that, nothing could be more absurd than to conceal, in an unknown tongue, the word of God

HENRY VIII.  
1509—1547.

Reparation of  
parsonages.

Penalties for dis-  
obedience to the  
injunctions.

"INSTITUTION OF  
A CHRISTIAN  
MAN."

Salvation re-  
fused to all per-  
sons out of the  
pale of the  
Catholic church.

PUBLICATION OF  
THE BIBLE in the  
English language  
justified, by iv.  
Lateran Council,  
canon ix.

Nothing more  
absurd than to  
conceal, in an  
unknown tongue  
the Word of  
God.

<sup>32</sup> Wilk. Con. iii. 839. 2 Collier, 139—143. 4 Lingard, 268.

<sup>33</sup> Conc. xi. 161, et etiam Con. Trent. Sess. XXII. c. viii. 2 La Martine's Pilg. 160.

HENRY VIII.  
1509—1547.

itself, and thus to counteract the will of heaven, which, for the purpose of universal salvation, had published that salutary doctrine to all nations. That if this practice were not very absurd, the artifice at least was very gross, and proved a consciousness that, the glosses and traditions of the clergy stood in direct opposition to the original text, dictated by Supreme intelligence.

That it was now necessary for the people, so long abused by interested pretensions, to see with their own eyes, and to examine whether the claims of the ecclesiastics were founded on that charter, which was, on all hands, acknowledged to be derived from heaven. And that, as a spirit of research and curiosity was happily revived, and men were now obliged to make a choice among the contending doctrines of different sects, the proper materials for decision, and above all, the holy Scriptures, should be set before them; and the revealed will of God, which the change of language had somewhat obscured, be again revealed to mankind<sup>34</sup>.

The king, actuated by these principles, issued new injunctions<sup>35</sup>, in 1538, to all incumbents, commanding them to provide a copy of the Bible printed in English<sup>36</sup>, and set it up

<sup>34</sup> 4 Hume, 152.

<sup>35</sup> 1 Burnet, 453, 490. Regist. Cramm. fol. 99, B; vide etiam Regist. Bonner, fol. 38.

<sup>36</sup> The Roman Catholic Church "receives and reverences with equal piety and veneration, the written books of the Old and New Testaments," and certain "unwritten traditions, pertaining both to faith and manners," (*vide post infra*, tit. "Canons of Scripture," temp. Edw. VI.) and by a decree of the Council of Trent, A.D. 1546 (Conc. XIV. 746-7), "If any one shall not receive these same books entire," "and in the old Latin Vulgate edition," "let him be anathema." But the Anglican Church (Art. VI.) pronounceth that "the Holy Scriptures containeth all things necessary to salvation." The Council of Trent likewise decreed, that "this same old vulgate edition, which has stood the test of so many ages' use in the Church, in public readings, disputings, preachings, and expoundings, be deemed authentic, and that no one, on any pretext, dare or presume to reject it." "And also, for the restraint of wanton wits, it decrees that in matters of faith and morals, pertaining to the edifying of Christian doctrine, no one, relying on his own prudence, shall dare to interpret the Holy Scripture, twisting it to his own meaning, against the sense which has been, and is held by Holy Mother Church, to whom it belongs to judge concerning the true sense and interpretation of Scripture, nor against the unanimous consent of the Fathers, even though such interpretations should never be published. Let those who shall act contrary to this decree be denounced by the ordinaries, and punished with the penalties rightly appointed." (Conc. XIV. 747.)

The Church of England does not receive the Holy Scriptures "as they are contained in the old Latin vulgate edition," but she has provided for herself a "translation out of the original Hebrew and Greek tongues;" as for the *Latin vulgate*, she does not hold it as authentic, but in fact rejects it. In many of the matters, which are controverted between the two Churches, the peculiar doctrines of the Roman Church are based upon the *foundation*

publicly in the church, and not to hinder or discourage the reading of it, but to encourage all persons to peruse it, as being the true lively word of God, which every Christian ought to believe, embrace, and follow, if he expected to be saved. And all were exhorted, not to make contests about the exposition or sense of any difficult place, but to refer that to men of higher judgment in the Scriptures.

Some other rules follow about instructing the people in the principles of religion, by teaching the Creed, the Lord's Prayer, and Ten Commandments, in English; and that, in every church, there should be a sermon made every quarter of a year at least, to declare to the people the true gospel of Christ, and to exhort them to the works of charity, mercy, and faith; and not to trust in other men's works, or pilgrimages to images, or relics, or sayings over beads, which they did not understand, since these things tended to idolatry and superstition, which, of all offences, did most provoke God's indignation. They were to take down all images which were abused by pilgrimages, or offerings made to them; and to suffer no candles to be set before any image, only there might be candles before the cross, and before the sacrament, and about the sepulchre; and they were to instruct the people that images served only as the books of the unlearned, to be remembrances of the conversations of them whom they represented, but if they made any other use of images, it was idolatry: for remedying whereof, as the king had already done in part, so he intended to do more for the abolishing such images, which might be a great offence to God, and a danger to the souls of his subjects. And if any of them had formerly magnified such images or pilgrimages to such purposes, they were ordered openly to recant, and acknowledge that, in saying such things, they had been led by no ground in Scripture, but were deceived by a vulgar error, which had crept into the church, through the avarice of those who had profit by it.

HENRY VIII.  
1509—1547.

The people to be instructed in the principles of religion.

Images to be taken down, which were abused by pilgrimages, or offerings made to them.

of tradition, or of some *apocryphal* book, or of the *vulgate translation*, whilst the Church of England takes her stand upon the true sense of the *Canonical Books of Holy Scripture*: thus disproving in every such case her agreement in doctrine with the Church of Rome; and undergoing a sentence of anathema from that Church. (Vide Mant, Churches of Rome and England Compared, 13, 14.) These are "*fundamental*" differences between the two Churches, because they affect the *foundation* of all religious instruction,—and during their existence, no effective co-operation between the Churches of England and Rome, in disseminating the pure and entire word of God, could be anticipated, unless accompanied by the most degrading apostasy, or the basest duplicity.

# HENRY VIII. 1509—1547.

Orders for  
keeping parish  
registers.

They were also to discover all such as were letters of the reading of God's word in English, or hindered the execution of these injunctions. Then followed orders for keeping of registers in their parishes; for reading all the king's injunctions once every quarter at least; that none were to alter any of the holydays without directions from the king; and all the eves of the holydays, formerly abrogated, were declared to be no fasting days; the commemoration of Thomas à Becket was to be omitted; the kneeling for the aves after sermon were also forbidden, which were said in hope to obtain the pope's pardon. And as in processions so many suffrages were used, with an *ora pro nobis* to the saints, by which there was not time to say the suffrages to God himself; they were to teach the people that it was better to omit the *ora pro nobis*, and to sing the other suffrages, which were most necessary and most effectual.

THE SIX  
ARTICLES.  
Stat. 31 Henry  
VIII. c. 14.

In 1539, the bill of the Six Articles became the law of the land, the preamble of which states<sup>37</sup>, that the king, considering the blessed effects of union, and the mischiefs of discord, since there were many different opinions, both among the clergy and laity, about some points of religion, had called this parliament, and a synod at the same time, for removing these differences, when six articles were proposed, and long debated by the clergy: and the king himself had come in person to the parliament and council, and opened many things of high learning and great knowledge about them: and that he, with the assent of both houses of parliament, had agreed on the following articles.

Sacrament of the  
altar.

Communion  
in both kinds not  
necessary to sal-  
vation.

Non-marriage of  
priests.

Vows of chastity.

Private masses.

Expediency of  
auricular confes-  
sion.

First, That in the sacrament of the altar, after the consecration, there remained no substance of bread and wine, but under these forms the natural body and blood of Christ were present. Secondly, That communion in both kinds was not necessary to salvation to all persons by the law of God; but that both the flesh and blood of Christ were together in each of the kinds. Thirdly, That priests, after the order of priesthood, might not marry by the law of God. Fourthly, That vows of chastity ought to be observed by the law of God. Fifthly, That the use of private masses ought to be continued; which, as it was agreeable to God's law, so men received great benefit by them. Sixthly, That auricular confession was expedient and necessary, and ought to be retained in the church.

The parliament thanked the king for the pains he had taken

<sup>37</sup> 1 Burnet, 469.

in these articles ; and enacted, that if any did speak, preach, or write against the first article, they were to be judged heretics, and to be burnt without any abjuration, and to forfeit their real and personal estate to the king. And those who preached, or obstinately disputed against the other articles, were to be judged felons, and to suffer death as felons, without benefit of clergy. And those who, either in word or writing, spake against them, were to be prisoners during the king's pleasure, and forfeit their goods and chattels to the king, for the first time ; and if they offended so, the second time, they were to suffer as felons. The marriages of priests were declared void ; and if any priest kept any such woman, whom he had so married, and lived familiarly with her, as with his wife, he was to be judged a felon ; and if a priest lived carnally with any other woman, he was upon the first conviction to forfeit his benefices, goods, and chattels, and to be imprisoned during the king's pleasure ; and upon the second conviction, was to suffer as a felon. The women so offending were also to be punished in the same manner as the priests : and those who contemned, or abstained from confession, or the sacrament, at the accustomed times, for the first offence, were to forfeit their goods and chattels, and be imprisoned ; and for the second, were to be adjudged of felony.

For the execution of this act, commissions were to be issued out to all archbishops and bishops, and their chancellors and commissaries, and such others in the several shires as the king should name, to hold their sessions quarterly, or oftener ; and they were to proceed upon presentments, and by a jury.

These commissioners were to swear, that they should execute their commission indifferently, without favour, affection, corruption, or malice. All ecclesiastical incumbents were to read this act in their churches once a quarter ; and, in the end, a proviso was added, concerning vows of chastity ; that they should not oblige any, except such as had taken them, at or above the age of twenty-one years ; or had not been compelled to take them.

The law of the Six Articles was mitigated by Stat. 35 Hen. VIII. c. 5, which enacted that no person should be put to his trial, upon an accusation concerning any of the offences comprised in Stat. 31 Hen. VIII. c. 14, except on the oath of twelve persons, before commissioners authorized for the purpose ; and that no person should be arrested, or committed to ward for

HENRY VIII.  
1509—1547.

Penalties for non-observance of the articles. Punishment of those, who preached or disputed against the Six Articles.

Marriages of priests.

Punishment of women.

Appointment of commissioners.

The law of the Six Articles mitigated.

Stat. 35 Henry VIII. c. 5.



**HENRY VIII.**  
1509—1547.

**ECCLESIASTICAL  
COMMISSIONERS.**

Commissioners  
appointed to set-  
tle a religion.

Stat. 32 Henry  
VIII. c. 26.

“ERUDITION FOR  
ANY CHRISTIAN  
MAN.”

**PUBLICATION OF  
THE LITANY.**

**PSALMS AND PRI-  
VATE DEVOTIONS.**

any such offence before he was indicted; and any preacher accused of speaking in his sermon contrary to these articles, was to be indicted within forty days.

Henry had appointed a commission consisting of the two archbishops and several bishops of both provinces, together with a considerable number of doctors of divinity, and, by virtue of his ecclesiastical supremacy, he had given them in charge to select a religion for his people<sup>38</sup>.

Before the commissioners had made any progress, the legislature, by Stat. 32 Henry VIII. c. 26, ratified all the tenets which these divines should thereafter establish with the king's consent; but the commissioners were to establish nothing repugnant to the laws and statutes of the realm; which proviso was inserted by the king to serve his own purposes: because, by introducing a confusion and contradiction into the laws, he became more master of every one's life and property. And, as the ancient independence of the church still gave him jealousy, he was thus enabled to introduce appeals from the spiritual to the civil courts. It was, for a like reason, that he would never promulgate a body of canon law, and he encouraged the judges, on all occasions, to interpose in ecclesiastical causes, wherever they thought the royal prerogative was concerned.

In 1542, another system of religious tenets published by Henry, is contained in a work, intituled, “A Necessary Doctrine and Erudition for any Christian Man.” It teaches the same doctrines, as the “Institution of a Christian Man”<sup>39</sup>, with the addition of transubstantiation, and the sufficiency of communion under one kind<sup>40</sup>.

Before the expedition against France in which Boulogne was taken, a litany in English had been published, which corresponds with our present one in almost every particular, except that the invocation of saints and angels was still retained, and there was a petition against the tyranny of the pope.

To this work, psalms and private devotions were added; and in the preface, the utility of private prayer in the mother tongue, is particularly insisted on. The correct notion, also,

<sup>38</sup> 4 Hume, 222.

<sup>39</sup> The “Bishop's Book,” or “The Godly and Pious Institution of a Christian Man,” was published in 1537; it was republished in 1543, intituled “The necessary Doctrine and Erudition of any Christian Man,” and being under royal authority, was called the “King's Book.”

<sup>40</sup> Wilk. Con. iii. 868. Strype, 100. 4 Lingard, 310, 311.

of Christ's presence in the sacrament of the Lord's supper, seems to be delivered, in an explanation of the Lord's Prayer, as a paraphrase of the fourth petition<sup>41</sup>: and in 1545, a collection of prayers was published, which was composed by the queen.

The other statutes of this reign relative to the Reformation, and which have not been noticed, were essentially in aid of those which have been extracted, and not introductory of new matter: thus 26 Henry VIII., c. 3, gave the king the first fruits and tenths which had been taken from the pope; by 26 Henry VIII., c. 14, the primitive institution of suffragan bishops was provided for, in order to promote the good government of the church; Stat. 27 Henry VIII., c. 15, for revising the canon law, and drawing up a body of ecclesiastical laws; Stat. 28 Henry VIII., c. 13, made an amendment in the late law of non-residence by the clergy; Stat. 31 Henry VIII., c. 9, the king was empowered to create bishops by letters patent; Stat. 34 and 35 Henry VIII., c. 1, some provisions were made about *Tindal's* books.

HENRY VIII.  
1509—1547.

Stat. 26 Henry VIII. c. 3.

Stat. 27 Henry VIII. c. 14, 15.

Stat. 28 Henry VIII. c. 13.

Stat. 31 Henry VIII. c. 9.

Stat. 34 and 35 Henry VIII. c. 1.

The chief object of the statutes, relative to ecclesiastical reformation.

The great object of these statutes was to rescue the kingdom from a foreign yoke, and to prevent the English clergy from establishing independent authority in their own body; in a word, to bring ecclesiastical causes, like the civil, under the control of the chief magistrate and fountain of justice.

But the prerogative being bounded by the provisions of the legislature, the supremacy abstractedly considered, implies no unreasonable power in the crown; and does not, in reality, involve any question about the respective merits of ecclesiastical establishments, except in so far as the clergy maintain, that their order is a divine institution which ought to be independent of civil government.

Wherever there is a religion of the state, it ought, in the nature of things, to be crastian, or subordinate to the civil constitution. If it be otherwise, there must necessarily either be such a clashing of interests between the church and state, as will prove destructive of public peace, and, in the common case, end in the ruin of the religious establishment, or the monarch will form a junction with the priesthood, prejudicial to the rest of the community, since each will, from their mutual interest, assist the other in usurpations upon the public rights<sup>42</sup>.

A religion of the state should be subordinate to the civil constitution.

<sup>41</sup> Strype, 174. 1 Short's Church Hist. 183; vide etiam 2 Ib. 306. Strype, 174.

<sup>42</sup> 1 Brodie, 99.

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## SECTION III.

EDWARD VI., January 28, A.D. 1547,—July 6, A.D. 1553.

- |                                        |                                                      |
|----------------------------------------|------------------------------------------------------|
| 1. General State of Political Affairs. | 4. Ill Effects from the Distribution of Abbey Lands. |
| 2. Rescission of Tyrannical Statutes.  | 5. The Riot Act.                                     |
| 3. Royal Proclamations.                | 6. Parliamentary Proceedings.                        |
|                                        | 7. The Reformation.                                  |

1. *General State of Political Affairs.*

It has been observed by Bolingbroke<sup>1</sup> that if Henry VIII. had left a son and successor of full age, and bold and enterprising like himself, our liberties had been irretrievably lost, according to all appearance.

Disposition of the crown of England belongs to the people of England.

Henry VIII., by applying to his parliament for the extraordinary powers which he exercised, and by taking these powers for such terms, and under such restrictions as the parliament imposed, owned indeed sufficiently that they did not belong of right to the crown. He owned, likewise, in effect, more than any prince who went before him, how absolutely the disposition of the crown of England belongs to the people of England, by procuring so many difficult and opposite settlements of it to be made in parliament; and yet tyranny was actually established. The freedom of our government might flourish in speculation, but certainly it did not subsist in practice.

Danger of admitting encroachments on the constitution.

Our forefathers, in the case supposed above, would very soon have found how fatal it is, under any circumstances, by any means, or under any pretences, to admit encroachments on the constitution; and how vain it is, when these encroachments are once admitted, for the service of some present turn, to prescribe the limitations to the exercise or duration of them: in fact, the principle of all political regulations should be:—Live with your enemy as if he were one day to become your friend; live with your friend as if he were one day to become your enemy.

But Providence directed the course of things better, and broke those shackles which we had forged for ourselves. A minority followed this turbulent reign: the government was weak, the governors divided, and the temper of the people such, as made it prudent to soothe them.

<sup>1</sup> Bolingbroke's Hist. Eng. 111.

This the Duke of Somerset did out of inclination, and the Duke of Northumberland out of policy. To the former we owe, not only the purification of the Anglican church from the dross of popery, but the first and great steps which were made to restore a free government.

In order to suppress that fact, so distasteful to the Tudors and Stuarts, that sovereignty is of popular origin, an innovation was made at the coronation. It had been the invariable rule for the king to take an oath to preserve the liberties of the realm, and especially those granted by Edward the Confessor<sup>2</sup>, &c., before the people were asked whether they would consent to have him as their king; but upon the present occasion, not only did the address to the people precede the oath of the king, but, in that address, they were reminded that, he held his crown by descent, and that it was their duty to submit to his rule.

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Policy of Somerset and Northumberland.

Change in the coronation oath.

## 2. *Rescission of Tyrannical Statutes.*

Several statutes, grievous to the nation, and destructive of liberty, were modified or rescinded: thus,—the Stat. 1 Edw. VI. c. 11, mitigated Stat. 28 Henry VIII. c. 17, which had empowered a minor king to annul every statute passed before the four-and-twentieth year of his age; by enacting, that he could only prevent their future execution, but could not recall any past effects which had ensued from them: the crime of treason was restricted to Stat. 25 Edw. III., st. 5, c. 2; and all enactments during the late reign, extending the crime of felony, except concerning those who counterfeited the king's sign manual, privy signet, or privy seal, and servants embezzling their master's goods; and all laws against lollardy or heresy, together with the Statute of the Six Articles, were repealed; and none were to be accused for words but within a month after they were spoken.

Treason restricted to Stat. 25 Edward III. Stat. 5, c. 2.

Stat. 1 Edward VI. c. 12.

Statute of the Six Articles repealed.

Heresy was, however, a capital crime by the common law, and was subjected to the penalty of burning, but there remained no precise standard by which that crime could be defined or determined,—a circumstance which might either be

Heresy a capital crime by the common law.

<sup>2</sup> 7 Rymer, 158. 2 Burnet, App. 93. 4 Lingard, 374.

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The tyrannical statutes of treason attempted to be renewed.

Penalties for calling the king heretic, schismatic, &c.

Stat. 5 & 6 Edward VI. c. 11.

No person to be convicted of treason, unless proved by the oaths of two witnesses.

Heirs of the crown endeavouring to break the order of succession treated as traitors.

advantageous or hurtful to public security, according to the disposition of the judges<sup>1</sup>.

These measures did not proceed from a spirit of liberty, but to "court popularity;" and, in 1552, a bill was introduced by the then ministry to renew those rigorous statutes of treason, which had been abrogated<sup>2</sup>; it was, however, rejected by the commons.

But, by a subsequent law<sup>3</sup>, whoever called the king or any of his heirs named in 35 Henry VIII. c. 1, heretic, schismatic, tyrant, infidel, or usurper of the crown, were to forfeit, for the first offence, their goods and chattels, and be imprisoned during pleasure; for the second, incur a præmunire; for the third, be attainted for treason. But if any should unadvisedly utter such a slander in writing, printing, painting, carving, or gravings, he was, for the first offence, to be held a traitor.

This law was passed, although the king and the Lady Mary were of different religions, and religions which equally reflected all the improper epithets that mad enthusiasm had invented; and it was almost impossible, if religious topics were discussed, for the disputants not to be subjected to its penalties. But the commons annexed a most important clause, by which no one could be convicted of any kind of treason, unless the crime were proved by the oaths of two witnesses confronted with the prisoner, and which was in unison with the first principles of equity. The House of Lords evinced, at first, some opposition to its enactments, trusting for protection to their present personal interest and power, instead of relying upon the noblest and most permanent of all securities,—that of laws.

By Stat. 1 Edward VI. c. 12, it was declared, that if any of the heirs of the crown usurped upon another, or endeavoured to break the order of succession, it should be accounted treason in them and their abettors<sup>4</sup>.

<sup>1</sup> 4 Hume, 307.

<sup>2</sup> 2 Burnet, 190. 3 Parl. Hist. 258.

<sup>3</sup> Stat. 5 and 6 Edward VI. c. 11. 1 Hallam's Const. Hist. 54, 55, 59.

<sup>4</sup> 4 Hume, 307. 1 Hale's P. C. 287.

### 3. *Royal Proclamations.*

The Stat. 31 Henry VIII. c. 8, enacting that proclamations should have the force of parliamentary enactments, and Stat. 34 and 35 Henry VIII. c. 23, for the due execution of such proclamations, were repealed<sup>1</sup>. But the Protector had previously availed himself of their provisions to promote the Reformation,—by which he suspended the jurisdiction of the bishops; while clerical and lay commissioners were appointed to make a general visitation in every diocese<sup>2</sup>.

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Stat. 1 Edward  
VI. c. 12.

The power of dispensation was frequently exercised:—the Protector procured a patent of precedence, which was a dispensation with the Stat. 31 Henry VIII., c. 10<sup>3</sup>; when the convocation found themselves restrained in their debates by the Statute of the Six Articles, the king granted them a dispensation of that law before it was repealed<sup>4</sup>; and the last act of Edward VI. was a patent<sup>5</sup> to alter the succession of the crown, although it had been settled by Stat. 35 Henry VIII. c. 1, and confirmed by one in his own reign.

Power of dispensation frequently exercised.

Although proclamations had not the authority of statutes, yet they were enforced by fine and imprisonment, and in some instances tyrannically exercised: thus, rates were fixed regulating the price of provisions; bad money was cried down; melting of current coin prohibited; in 1549, justices of the peace were commanded to arrest sowers and tellers abroad of vain and forged tales and lies, and to commit them to the galleys, there to serve in chains as slaves during the king's pleasure; and, under the sanction of parliament, material alterations were effected by proclamations in the national worship<sup>6</sup>.

Proclamations enforced by fine and imprisonment

Stat. 3 & 4 Edward VI. c. 16.

### 4. *Ill Effects from the Distribution of Abbey Lands.*

There is no abuse so great in civil society, as not to be attended with a variety of beneficial consequences; and in

<sup>1</sup> Stat. 1 Edward VI. c. 12.

<sup>2</sup> 4 Wilkins, 11, 14, 17. 2 Collier, Records, 59. 4 Lingard, 385.

<sup>3</sup> 15 Rymer, 164.

<sup>4</sup> Antiq. Britan. 339.

<sup>5</sup> Strype's Cranmer, App. 163. 3 Burnet, Rec. 207. 4 Huene, 363—365.

<sup>6</sup> 2 Strype, 147, 149, 491. 2 Burnet, 59, 60. 2 Collier, 24. Heylin, 55.

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the beginnings of reformation, the loss of these advantages is always felt very sensibly, while the benefit resulting from the change, is the slow effect of time, and is seldom perceived by the bulk of a nation.

Suppression of  
monasteries re-  
gretted by the  
people.

Scarce any institution can be imagined less favourable, in the main, to the interests of mankind, than that of monks and friars, yet was it followed by many good effects, which having ceased by the suppression of monasteries, were much regretted by the people of England.

The monks the  
best of landlords.

The monks always residing in their convents, in the centre of their estates, spent their money in the provinces, and among their tenants, and thus afforded a ready market for commodities; besides which, they were acknowledged to have been in England, as they still are in Roman Catholic countries, the best and most indulgent of landlords<sup>1</sup>.

Tenantry sub-  
jected to oppres-  
sive exactions  
under laymen.

But when the abbey lands were distributed among laymen, the rents were raised,—the same facilities did not exist in the disposal of their produce,—and the tenantry were subjected to oppressive exactions.

Pasturage was also found more profitable than unskilful tillage; estates were laid waste by inclosures; the tenants, regarded as a useless burden, were expelled their habitations; and the cottagers, deprived of the commons on which they formerly fed their cattle, were reduced to misery.

Poor-laws.

Stat. 1 Edward  
VI. c. 3.

Stat. 3 & 4 Ed-  
ward VI. c. 16.

The natural result of such circumstances was, that vagrancy and begging had arisen to such an extent, that parliament interfered by legislative enactments. By Stat. 1 Edward VI. c. 3, which was framed upon the revolting principle that, the poor should be treated as felons, it was enacted that, any person might apprehend those living idly, wandering, and loitering about without employment, and bring them before two justices, who, upon proof by two witnesses, or confession of the accused, were to adjudge such offenders to be treated as vagabonds, causing them to be marked with a hot iron on the breast, with the letter V, and to adjudge them to be slaves for two years to the person who apprehended them.

Stat. 5 and 6 Ed-  
ward VI. c. 2.

The House of Peers passed a bill, making a provision for the poor, but the commons not choosing that a money bill should begin in the upper house, framed a new act to the same purpose. By this act the churchwardens were em-

<sup>1</sup> 4 Hume, 326.

<sup>2</sup> 4 Reeves, 451, 454.

powered to collect charitable contributions, and if any refused to give, or dissuaded others from that charity, the bishop of the diocese was empowered to proceed against them. Such large discretionary power entrusted to the prelates, seemed as proper an object of jealousy as the authority assumed by the peers<sup>3</sup>.

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### 5. *The Riot Act.*

From the riots<sup>1</sup> which had arisen, and to prevent their repetition, a severe law was provided, by which if twelve persons assembled for any matter of state, and, being required by a magistrate, should not disperse, they incurred the penalties of treason, and any attempt to kill a privy councillor was declared to be a felony<sup>2</sup>; under which enactment the Duke of Somerset was executed.

Any attempt to kill a privy councillor declared to be a felony.

The office of "lord lieutenant of counties" originated from these riots, who were empowered to inquire of treason, misprision of treason, insurrections, and riots, with authority to levy men, and lead them against the enemies of the king<sup>3</sup>.

Origin of lord lieutenants.

### 6. *Parliamentary Proceedings.*

Notwithstanding the minority of Edward, the parliaments were equally regardless of national liberty and private property, by giving the crown powers of an absolute tendency; thus, upon a complaint of the bishops that they could not punish vice, nor exert the discipline of the church, the king was empowered by statute<sup>1</sup> to appoint thirty-two commissioners to compile a body of canon laws, which were to be valid, though never ratified by parliament; but, perhaps fortunately, no results ensued, as the king died before the commissioners' report had been confirmed, and the old canons remained in force by usage, and the Stat. 25 Henry VIII. c. 19<sup>2</sup>.

Thirty-two commissioners appointed to compile a book of canon laws.

<sup>3</sup> Stat. 5 and 6 Edward VI. c. 2. 4 Hume, 356.

<sup>1</sup> Hollingshed, 1003, 1030—1034. Hayward, 292—299. 2 Fox, 666.

<sup>2</sup> Strype, 174. Stowe's Annals, 597; Mem. Cranmer, 186. Heylin, 76.

<sup>4</sup> Hume, 330, 331.

<sup>2</sup> Stat. 3 and 4 Edward VI. c. 5.

<sup>3</sup> 2 Strype, 178. 4 Lingard, 416.

<sup>1</sup> Stat. 3 and 4 Edward VI. c. 11.

<sup>2</sup> Reformatio Legum Ecclesiasticarum, anno 1571. 4 Hume, 340, 341.

<sup>4</sup> Lingard, 462—464.



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**Trials of Lord  
Seymour and  
the Duke of  
Somerset.**

**Attainder of the  
Bishop of Dur-  
ham.**

**Improper inter-  
ference in the re-  
turn of members  
of parliament.**

**Letters from the  
aldermen and  
brethren of  
Grantham to Sir  
William Cecil.**

The trials of Lord Seymour<sup>3</sup> and the Duke of Somerset<sup>4</sup> illustrate that, penal laws when administered by large and popular bodies, are mere instruments for the gratification of some of the basest passions of the human breast. The private deposition of a suborned witness, unopposed with the prisoner, has been, in many instances, considered by the "peers" and "commons" ample evidence of traitorous guilt, when a nest of political despots were to be gratified, by the blood of a powerful and illustrious rival.

To pander to the rapacity and ambition of the Duke of Northumberland<sup>5</sup>, a bill of attainder against Tunstall, Bishop of Durham, was passed by the lords, but when sent to the commons, they required that witnesses should be examined, that the accused should be allowed to defend himself, and that he should be confronted with his accusers, and when these demands were refused, the bill was rejected.

This act of justice did not arise from a sense of liberty and right, but from the influence of partisanship; and when the bill of attainder against Somerset and his accomplices was sent to the commons, it was rejected, which rejection caused their dissolution<sup>6</sup>.

Northumberland and the ministers, in order to secure the election of persons compliant with their views, sent letters directly to the electors, commanding them to return certain specified persons as representatives to serve in parliament. Thus in a letter from the aldermen and brethren of Grantham, to Sir William Cecil, the following passage occurs,—“Your desire in your said letter, touching the appointment of our burgesses, we have most gladly accepted and granted; and have requested the sheriff to repair unto you for the nomination of the person. For the other, before the receipt of any of your letters, at the special suit of the Earl of Rutland, we have agreed to continue our ancient burgess Sir Edward Warner, Knight; from which agreement, made at the instance of so noble a man, we cannot with our honesties

<sup>3</sup> Lords' Journals, 345—347. 2 Burnet, 99. 2 Burnet, Records, 164. 2 Strype, 126. Stat. 2 and 3 Edward VI. c. 18. 4 Lingard, 404. 4 Hume, 319.

<sup>4</sup> Coke's Entries, fol. 482. 15 Rymer, 295. 2 Burnet, 178. Hayward, 320—325. Hollingshed, 1067. Heylin, 112. Stowe, 606. 4 Lingard, 451—455. 4 Hume, 351—354.

<sup>5</sup> 2 Strype, 507. 4 Hume, 357.

<sup>6</sup> Lords' Journals, 418, 425. 4 Lingard, 459.

digress, so that we be not able to perform your request made in the behalf of Mr. Hussey<sup>7</sup>."

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Circular letters were likewise written by the king to all the sheriffs, in which he enjoined them to inform the freeholders that, they were required to choose men of knowledge and experience for their representatives, and to attend to all the recommendations that were sent by the privy council<sup>8</sup>.

Circular letters written by the king to the sheriffs, to influence a parliamentary election

This flagrant violation of the elective franchise was unconcured, and the parliament, as might have been anticipated, were the servile creatures of Northumberland, and granted a supply, with a preamble, containing a long accusation against Somerset; but the death of the king prevented additional proofs of their honour and patriotism.

This flagrant violation of the elective franchise unnoticed.

These facts establish, that at this period the commons were not the jealous safeguards of national rights; but a useful machine in the hands of any crafty government.

The commons a useful machine in the hands of government.

### 7. *The Reformation.*

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The laity who adhered to the See of Rome, saw themselves, upon the accession of Edward VI., destitute of their late powerful protection; and the clergy were reduced to subordination under the king, as their supreme head, and, consequently, unable to offer any effective treasonable opposition against the principles of the Reformation.

Weakness of the laity and clergy who adhered to Rome.

Instructing the people in the reformed faith, and sending visitors over England with injunctions and articles to correct the existing abuses, was the first essential step towards the Reformation in this reign<sup>1</sup>.

INSTRUCTION OF THE PEOPLE IN THE REFORMED FAITH.

Homilies were prepared, in which the following topics were discussed:—the use of the Scriptures—misery of mankind by sin—of their salvation by Christ—of true and lively faith—of good works—of Christian love and charity—against swearing, and chiefly perjury—against apostasy or declining from God—against the fear of death—an exhortation to obedience—against whoredom and adultery, setting forth the state of marriage, how necessary and honourable it was—and against contention chiefly about matters of religion.

Topics discussed in the Homilies.

<sup>7</sup> Cecil Papers, 1552, 1559, MSS. Lands. No. 3, pp. 19—38. 2 M. and S. Hist. Boroughs, 1172, et seq.

<sup>8</sup> Strype's Eccl. Mem. 394. 4 Hume, 358.

<sup>1</sup> 4 Wilkins, 11, 14, 17. 2 Collier, Records, 59. Mem. Cranm. 146, et seq. 4 Hume, 291.

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*It is not the religion of the heart, but of the imagination, which enslaves the Roman Catholics.*

The Roman Catholic clergy, instead of aspiring to sanctity and virtue, which alone can render man acceptable to the Great Author of order and excellence, imagined that they satisfied every obligation of duty, by a scrupulous observance of external ceremonies<sup>2</sup>; and it was not the religion of the heart but of the imagination which enslaved the votaries of the Romish church; its pomps, ceremonies, and incomprehensibilities, inspired the vulgar mind with awe, and veneration for the clergy, who, when they depended in any degree upon the prince, were generally disposed to advance the prerogative, that it might re-act in their own favour; but when upon the contrary, no selfish advantage could be derived from the advancement of the prerogative, then they became traitors in the most extensive import of the term. The influence which the clergy had so acquired over the population is thus depicted by Dr. Burnet.

*Delusions of the people as to the spiritual powers of their priests.*

“The ignorant commons seemed to consider their priests as a sort of people, who had such a secret trick of saving their souls, as mountebanks pretend in the curing of diseases; and that there was nothing to be done but to leave themselves in their hands, and the business could not miscarry. This was the chief basis and support of all that superstition, which was so prevalent over the nation.

“The other extreme was of some corrupt gossellers, who thought, if they magnified Christ much, and depended on his merits and intercession, they could not perish, which way soever they led their lives.”

*Exposition of doctrine, in the Homilies.*

Especial care was therefore taken that these homilies should rectify such errors: and the salvation of mankind was, on the one hand, wholly ascribed to the death and sufferings of Christ, to which sinners were taught to fly, and to trust to it only, and to no other devices, for the pardon of sin.

They were, at the same time, to be instructed, that there was no salvation through Christ, but to such as truly repented, and lived according to the rules of the Gospel. The whole matter was so ordered, as to teach them, that, avoiding the hurtful errors on both hands, they might all know the true and certain way of attaining eternal happiness<sup>3</sup>.

Positive enactments, inter alia, being made in this reign, and also in that of Elizabeth, respecting the religious doctrines

<sup>2</sup> 1 Roberts. Hist., ch. v. 19, Note i. quarto edit.

<sup>3</sup> 2 Burnet, 49, 50.

of the English Catholic church, a slight sketch of the early history of the principal dogmas may, perhaps, be requisite, as illustrative of the proposition;—*that the changes which were effected about this period by the English Catholic church, were justified by the practice of the primitive church, and that the Roman Catholic schismatic doctrines are of modern origin, and unjustifiable.*

By a decree of the third general council, at Ephesus, A.D. 431<sup>4</sup>, the holy synod determined that “it should not be lawful for any one to set forth, write, or compose any other creed than that, which was determined by the holy fathers who assembled at Nice, in the Holy Ghost; and that if any shall dare to compose any other creed, or adduce, or present it to those who are willing to be converted to the knowledge of the truth, either from heathenism or judaism, or any heresy whatsoever, such persons, if bishops, shall be deprived of their episcopal office; if clergy, of the clerical,” &c.

In 1546, the following decree was issued by the council of Trent<sup>5</sup>. “In the name of the holy and undivided Trinity, this holy, œcumenical, and general synod of Trent, lawfully assembled in the Holy Spirit, . . . before all things, decrees and determines to set forth, in the first place, the confession of faith, following the examples of the fathers in this matter, who were wont to place this in the beginning of their actions, as a shield against all heresies. . . . Wherefore it has thought fit to express the symbol of the faith which the holy Roman church uses, as that first principle in which all, who profess the faith of Christ, necessarily believe, and the firm and only foundation against which the gates of hell shall not prevail, in the very words in which it is read in all the churches; which is as follows. I BELIEVE in one God, the Father Almighty, maker of heaven and earth, of all things visible and invisible; and in one Lord, Jesus Christ, the only begotten Son of God, born of the Father before all worlds; God of God, Light of Light, very God of very God; begotten, not made, being of one substance with the Father, by whom all things were made; who for us men and for our salvation came down from heaven, and was incarnate by the Holy Ghost of the Virgin Mary, and was made man: He was crucified also for us; He suffered under Pontius Pilate, and

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All changes effected by the English Catholic church, justified by the practice of the primitive church.

III Council at  
Ephesus, A.D. 431.

ALTERATION IN  
THE CREED UN-  
LAWFUL.

The decree issued  
by the Council of  
Trent, A.D. 1546.

The Creed  
against which,  
the Gates of Hell  
shall not prevail.

<sup>4</sup> III Conc. Ephesus, Act. 6. Conc. III. 639. Socrates, Eccles. Hist. vii. 34.

<sup>5</sup> Conc. Trent, Sess. III. A.D. 1546. Conc. XIV. 743, 744.

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was buried; and the third day rose again, according to the Scripture: and ascended into heaven: He sitteth at the right hand of the Father; and He shall come again with glory to judge the quick and the dead; of whose kingdom there shall be no end; and in the Holy Ghost, the Lord and giver of life; who proceedeth from the Father and the Son, who with the Father and the Son together is worshipped and glorified; who spake by the prophets; and one holy catholic and apostolic church. I acknowledge one baptism for the remission of sins; and I look for the resurrection of the dead, and the life of the world to come. Amen."

The symbol of the Roman faith in 1546 was that, which to this day is used in the Anglican church.

In this decree it is testified that, the "symbol of faith which the holy Roman church" then used, "the shield against all heresies," "the firm and *only foundation* against which the gates of hell shall not prevail," was that, which to this day is used in the Church of England, without alteration or addition. the same (with the exception of the interpolation "and the Son") which the holy church, throughout all the world, has received and professed since A.D. 381.

A new Creed issued by Pius VI.

Within twenty years after this testimony, did the Bishop of Rome put forth another creed, containing points of doctrine, which not only never had a place in any former creed, but against many of which the fathers of the church collectively and individually have borne testimony: and that now is made the schismatical term of communion, in that which was once a genuine branch of the catholic and apostolic church<sup>6</sup>.

CANONS OF  
SCRIPTURE.

Council of Trent,  
A.D. 1546.

The council of Trent committed another act of schism, heresy, and impiety, by decreeing that those were to be accursed who did not receive certain unwritten traditions of the Romish Church, and also, *with all their parts*, the Books of Tobit, Judith, Wisdom, Ecclesiasticus, Baruch, Daniel, and two of Maccabees, the first and second;—thus admitting the History of Bel and the Dragon, the Story of Susannah, and the Song of the Three Children, &c., as sacred and canonical<sup>7</sup>: and these books the most eminent fathers of the church, in all ages, had agreed to reject, as works establishing doctrinal points of faith<sup>8</sup>.

<sup>6</sup> Chrysostom, Homil. in Pentecost, edit. Benedict. vi. 233. Cyril of Alexandria de Sanct. Trinitate, Dial. iv. p. 310, and Hilary de Trinitat. lib. vi. c. 37, i. 169. Perceval on Schism, 156, 359, 360.

<sup>7</sup> Sess. 4. Conc. XIV., 746, 747. Vide list of Fathers thus accursed, Perceval on Schism, 420.

<sup>8</sup> Vide ante 202, et Art. VI. of the Church of England *contra*. IV Conc. Chalcedon. Conc. I. 5007, *contra*.

The council of Trent, A.D. 1547<sup>9</sup>, was the first which enjoined by anathema the acknowledgment of seven sacraments. By the first canon, it is decreed that, "If any shall say, that the sacraments of the new law were not all instituted by our Lord Jesus Christ, or that they are more or fewer than seven, to wit, Baptism, Confirmation, the Eucharist, Repentance, Extreme Unction, Orders, and Matrimony; or that any of these seven is not truly and properly a sacrament: let him be accursed<sup>10</sup>."

The following extract from Gregory the Great, Bishop of Rome, will show *how many sacraments he received*. It will be found in the canon law<sup>11</sup>. "Sunt autem sacramenta, baptisma, chrisma, corpus et sanguis Christi, quæ ob id sacramenta dicuntur, quia sub tegumento corporalium rerum virtus Divina, secretius salutem eorundem sacramentorum operatur." Again, "Hoc de corpore et sanguine Domini nostri Jesu Christi, hoc etiam de baptismo et chrismate sentiendum est." Upon these passages Mr. Perceval observes<sup>12</sup>,—"Here are only two sacraments recognised, washing and anointing being as much included under one, as the body and blood are under the other; confirmation or chrism being no more a sacrament distinct from baptism, than the cup is a sacrament distinct from the bread."

The sacrifice of the mass<sup>13</sup>, according to the Church of Rome, was authorised at the Council of Trent<sup>14</sup>, in 1562.

Canon I. If any shall say, that in the mass there is not offered to God a true and proper sacrifice; or that the offering is nothing else than that Christ is given us to eat: let him be accursed.

Canon II. If any shall say, that by these words, "Do this in remembrance of me," Christ did not appoint his apostles to be priests; or did not ordain that, they and other priests should offer his body and blood: let him be accursed.

Canon III. If any shall say, that the sacrifice of the mass

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THE SEVEN  
SACRAMENTS.  
Council of Trent,  
A.D. 1547.

The number of  
sacraments  
which were re-  
ceived by Gre-  
gory the Great,  
Bishop of Rome.

SACRIFICE OF  
THE MASS.  
Council of Trent,  
A.D. 1562.

<sup>9</sup> Conc. Trent, A.D. 1547, Sess. VII. Conc. XIV. 776, et vide etiam Dec. Sess. V. Conc. Trent, Bapt. Conc. XIV. 751, 752.

<sup>10</sup> Vide Art. XXV. of the Church of England *contra*, et etiam Art. IX. of the Church of England as to Baptism.

<sup>11</sup> Decr. ii. pars. c. 1, q. 1, s. 84.

<sup>12</sup> Perceval on Schism, p. 369.

<sup>13</sup> The word "missa," or "mass," was originally a general name for every part of the divine service.

<sup>14</sup> Conc. Trent, A.D. 1562, Sess. XXII. Conc. XIV.

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is only a service of praise and thanksgiving, or a bare commemoration of the sacrifice made upon the cross, but not a propitiatory offering; or that it is profitable to the receiver alone; and that it ought not to be offered for the living and the dead, for sins, punishments, satisfactions, and other necessities: let him be accursed.

Canon IV. If any shall say, that by the sacrifice of the mass, blasphemy is offered to the most holy sacrifice of Christ, accomplished on the cross, or that that is dishonoured by this: let him be accursed<sup>15</sup>.

PRIVATE OR SOLITARY MASS.  
Council of Trent,  
A.D. 1562.

Private or solitary mass was unknown in the early church<sup>16</sup> and the departure of the Roman Catholic church was authorised at the Council of Trent, in 1562, under the following decree.

“The holy synod could indeed wish, that in every mass, the faithful, who are present, should communicate not only in spiritual affection, but also in sacramental receiving of the eucharist, in order that they might more abundantly profit by this most holy sacrifice: but, if this may not always be, she does not therefore condemn those masses in which the priest alone sacramentally communicates, as if they were private and unlawful; but approves and commends them. For those masses also ought to be accounted common, partly, because in them, the people spiritually communicate, and partly because they are celebrated by the public minister of the church, not for himself only, but for all the faithful who belong to the body of Christ.”

Canon VIII. If any shall say, that the masses, in which the priest alone receives sacramental communion, are unlawful, and therefore to be abolished; let him be accursed<sup>17</sup>.

COMMUNION IN  
ONE KIND.

Condemned by  
Pope Gelasius.

The error of receiving the communion in one kind was advocated from an early period, but it was immediately suppressed by the church. Thus Pope Gelasius<sup>18</sup>, A. D. 494: “We have found that some persons receive only a portion of the holy body, and abstain from the sacred blood, who without doubt ought either to receive the entire sacrament, or to be

<sup>15</sup> Vide Art. XXXI. of the Church of England, *contra*.

<sup>16</sup> Bingham, vi. 721. 1 Short's Church Hist. 29.

<sup>17</sup> Sess. XXII. cap. 6, et Can. VIII. Conc. XIV. 352—356. Vide Art. XXXI. of the Church of England, *contra*. Et etiam Rubric at the end of the Communion Service.

<sup>18</sup> Epist. ad Majoric et Joan. Decret. III. P. de Consecr. dist. II. s. 12, et vide etiam Bingham, vi. 813, 772. Peckham's Const. 1281.

expelled from it entirely; because a division of one and the same mystery cannot take place without gross sacrilege."

At the Council of Braga<sup>19</sup>, A. D. 675: "We have heard that some give to the people the bread of the eucharist dipped in the wine, instead of the full communion, . . . which receives no sanction from the Gospel, where he gave to the apostles his body and his blood; for the giving of the bread is mentioned separately; and the giving of the cup is mentioned separately: and therefore all such error and presumption ought to cease." And this decree was to be enforced on pain of suspension and deposition.

Notwithstanding these explicit ordinances, the following articles were agreed upon at the Council of Constance, A. D. 1415, being the first synodical prohibition of the administration of the holy eucharist in both kinds<sup>20</sup>.

"Whereas, in some parts of the world, certain persons rashly presume to assert, that the Christian people ought to receive the holy sacrament of the eucharist under both kinds of bread and wine: and do everywhere communicate the laity, not only in the bread, but also in the wine; and pertinaciously assert also, that they ought to communicate after supper, or else not fasting, doing this contrary to the laudable custom of the church, which is agreeable to reason, which they damnably endeavour to reprobate as sacrilegious, this present holy general Council of Constance, lawfully assembled in the Holy Ghost, earnestly desiring to protect the safety of the faithful against this error, after much and mature deliberation had of many, who are learned both in divine and human law, declares, decrees, and determines, that, although Christ instituted this venerable sacrament after supper, and administered it to his disciples under both kinds of bread and wine, yet, notwithstanding this, the laudable authority of the sacred canons, and the approved custom of the church has observed, that this sacrament ought not to be performed after supper, nor be received by the faithful unless fasting, except in the case of sickness, or any other necessity, either duly conceded or admitted by the church; and, in like manner, that although in the primitive church, this sacrament was received of the faithful under both kinds, yet for the avoiding any dangers and scandals, the custom has reasonably been introduced that it be received by the officiating persons under both kinds, but by

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Council of Braga,  
A. D. 675.

Council of Con-  
stance, Sess. XIII.  
A. D. 1415.

First synodical  
prohibition of  
the administra-  
tion of the holy  
eucharist in

<sup>19</sup> Conc. VI. 562.

<sup>20</sup> Conc. XIII. 100, 101. Perc. Hist. Not. 19.



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That no presbyter, on pain of excommunication, communicate the people under both kinds of bread and wine.

The commandment of God, essentially rejected by the Council of Constance.

Council of Trent,  
A.D. 1562,  
Sess. XXI.

the laity only under the kind of bread: since it is to be believed most firmly, and in no wise to be doubted, that the whole body and blood of Christ is truly contained as well under the species of bread, as under that of wine. . . ."

"Also the same holy synod decrees and declares, upon this subject, that processes be directed to the most reverend fathers in Christ, the lord patriarchs, &c., in which shall be charged and commanded, under pain of excommunication, by the authority of this council, that they effectually punish those who act contrary to this decree, and who, by communicating the people under both kinds of bread and wine, have exhorted and taught that it ought to be so done: and if they return to repentance, let them be received into the bosom of the church, a wholesome penance being enjoined them proportioned to their offence. But if any of them, with a hardened heart, shall refuse to return to repentance, they are to be compelled, as heretics, by ecclesiastical censures, the assistance of the secular arm being called in (if necessary)."

It will be perceived that the synod, though they confess that Christ administered the holy sacrament to his disciples under both species of bread and wine, yet essentially rejected the commandment of God, by ordaining, that "no presbyter, under pain of excommunication, communicate to the people under both kinds."

In 1562, other decrees were issued by the Council of Trent, thus;—Canon I. If any shall say, that by the command of God, or as necessary to salvation, all and sundry of the faithful of Christ ought to receive both kinds of the most holy sacrament of the eucharist: let him be accursed.

Canon II. If any shall say, that the holy Catholic church has not been induced by just causes and reasons, to communicate to the laity, and also to the clergy who do not celebrate the service, under the same kind of bread only: or that she has erred in so doing: let him be accursed.

Canon III. If any shall deny, that whole and entire Christ, the fountain and author of all graces, is received under the one kind of bread, because, as some falsely assert, he is not received under both kinds according to Christ's institution: let him be accursed.<sup>21</sup>

<sup>21</sup> Conc. XIV. 846, 847. Art. XXX. of the Church of England, *contra*. The Council of Trent anathematized, among others, Cyprian, (Epist. ad Cæcilium, l. 1. 185-9,) Julius, Bishop of Rome, (Epist. ad. Episc. Ægypti.

With respect to transubstantiation, St. Chrysostom himself, in his Epistle written to Cæsarius against the heresy of Apollinarius, says<sup>22</sup>, "As, before the bread be sanctified, we call it bread, but when God's grace hath sanctified it by the means of the priest, it is delivered from the name of bread, and is reputed worthy the name of the Lord's body, although the nature of the bread remain still in it; and it is not called two bodies, but one body of God's Son: so likewise here, the Divine Nature residing in the body of Christ, these two make one Son, and one Person."

Theodoret<sup>23</sup> states that, our Saviour, "in the delivery of the mysteries, called bread his body, and that which was mixed 'in the cup' his blood:" that he "changed the names, and gave to the body the name of the symbol," or sign, "and to the symbol the name of the body;" that he "honoured the visible symbols with the name of his body and blood; not changing the nature, but adding grace to nature," and that "this most holy food is a symbol and type of those things whose names it beareth," to wit, "of the body and blood of Christ."

Gelasius<sup>24</sup> writeth thus: "The sacraments which we receive of the body and blood of Christ are a divine thing, by means whereof we are made partakers of the Divine nature; and yet the substance or nature of bread and wine doth not cease to be. And indeed the image and similitude of the body and blood of Christ are celebrated in the action of the mysteries. It appeareth, therefore, evidently enough unto us, that we are to hold the same opinion of the Lord Christ himself which we profess, celebrate, and are, in his image; that as" those sacraments, "by the operation of the Holy Spirit, pass into this, that is, into the Divine substance, and yet remain in the propriety of their own nature; so that principal mystery itself, whose force and virtue they truly represent," should be

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THE DOCTRINE  
OF TRANSUB-  
STANTIATION.

Opinion of St.  
Chrysostom, in  
his Epistle writ-  
ten to Cæsarius.

Opinion of Theo-  
doret.

Opinion of Gela-  
sius.

Decret. III. P. de Consecr. dist. II. s. 7.) Ambrose, (Comment. in 1 Cor. xi. 274.) Leo. I. Bishop of Rome, (Sermo IV. in Quadrages. v. V. pars 2, p. 822.) Gelasius, Bishop of Rome, (Epist. ad Majoric et Joan. Decret. III. P. de Consecr. dist. II. s. 12.) the Fathers in the Council of Braga. (Cona. VI. 562,) the Compilers of the Oriental Rubric, (cited by Renaudot, II. 120.) Albertus Magnus, (4 Sent. dist. 8, Art. 13, tom. iv.) Alexander of Hales, (Quæst. 32, Mem. I. Art. 2, tom. iv. 123.) Perceval on Roman Schism, 444, 445, passim.

<sup>22</sup> Chrysost. ad Cæsarium monachum. Archb. Usher's Answer to a Jesuit, 59.

<sup>23</sup> Theod. Dialog. I. "Αρρετος, fol. 8, edit. Rom. an. 1547.

<sup>24</sup> Gelas. de Duab. Natur. in Christo, contra Eutychen.

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Opinion of  
Ephræmius, the  
Patriarch of An-  
tioch.

conceived to be, namely, to consist of two natures, divine and human; the one not abolishing the truth of the other.

Ephræmius<sup>25</sup>, the patriarch of Antioch, has also spoken of the distinction of these two natures in Christ, and said, that “no man having understanding could say, that there was the same nature of that which could be handled, and of that which could not be handled, of that which was visible, and of that which was invisible;” addeth, “and even thus the body of Christ which is received by the faithful,” (the sacrament he meaneth;) “doth neither depart from its sensible substance, and yet remaineth undivided from intelligible grace; and baptism, being wholly made spiritual, and remaining one, doth both retain the property of its sensible substance, (of water, I mean,) and yet loseth not that which is made<sup>26</sup>.”

History of tran-  
substantiation,  
by Waterland.

The history of the doctrine of transubstantiation is thus stated by Waterland. “In the year 787, the second Council of Nice began with a rash determination, that the sacred symbols are not figures or images at all, but the very body and blood.

About 831, Paschasius Radbertus carried it further even to transubstantiation, or somewhat very like it.

The name of transubstantiation is supposed to have come in about A.D. 1100, first mentioned by Hildebertus Cenomanensis of that time<sup>27</sup>. In 1215, the doctrine was made an article of faith by the Lateran Council, under Innocent III.<sup>28</sup>”

Transubstantia-  
tion according to  
the canons of the  
Church of Rome.

In the exposition of faith, as contained in Canon I. of the fourth Council of Lateran, A. D. 1215, there are these words: —“Whose (Jesus Christ’s) body and blood in the sacrament of the altar are truly contained under the species of bread and wine, which, through the Divine power, are transubstantiated, the bread into the body, and the wine into the blood, that for

Council of Late-  
ran, A.D. 1215.

<sup>25</sup> Ephræmius de Sacris Antiochiæ, Legib. lib. I. in Photii Bibliotheca, Cod. 229. Archb. Usher’s Answer to a Jesuit, 60.

<sup>26</sup> Vide etiam Tertul. in lib. de Anima, cap. 17, cui titulus, de Quinque Sensibus. Tertul. de Resurrect. Carnis, cap. 37. Orig. in Levit. cap. 10, Hom. VII. Aug. in Evang. Johan. Tract. 25, 26, 50. Euseb. lib. iii. Ecclesiast. Theologicæ, cont. Marcell. Clem. Alex. Pædag. lib. ii. c. 2. Tertul. advers. Marcion, lib. iv. c. 40. Euseb. lib. viii. Demonst. Evang. in fine, cap. 1. Luke xxii. 18. Matth. xxvi. 29. Mark xiv. 25. 1 Cor. xi. 25. Archb. Usher’s Answer to a Jesuit, 41—44.

<sup>27</sup> P. 639, edit. Benedict.

<sup>28</sup> Waterland’s Works, vii. 182; et vide etiam ibid. viii. 235.

the fulfilment of the mystery of unity, we may receive of his, that which he received of ours<sup>29</sup>."

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Prior to A. D. 1215, Tunstall, Bishop of Durham, says,—  
"concerning the manner in which that" (the sacramental change of the elements) "is effected, it were better to leave every person to his own conjecture, as it was free to do before the Council of Lateran."

Tunstall, Bishop of Durham, blames the decree of the Lateran Council.

In 1551, the Council of Trent<sup>30</sup> decreed, by Canon I. If any shall deny, that in the sacrament of the most holy eucharist, there is contained truly, really, and substantially, the body and blood, together with the soul and divinity of our Lord Jesus Christ, and so whole Christ; but shall say that He is only in it in sign, or figure, or power: let him be accursed.

Canons of the Council of Trent, A.D. 1551.

Canon II. If any shall say, that in the most sacred sacrament of the eucharist, there remains the substance of bread and wine, together with the body and blood of our Lord Jesus Christ; and shall deny that wonderful and singular conversion of the whole substance of the bread into the body, and of the whole substance of the wine into the blood, while only the appearance of bread and wine remain, which conversion the Catholic church most aptly styles transubstantiation: let him be accursed<sup>31</sup>.

Canon IV. If any shall say, that when consecration is performed, the body and blood of our Lord Jesus Christ is not in the admirable sacrament of the eucharist, but only in the use, whilst it is taken, but not before or after; and that in the consecrated hosts or particles, which are reserved or remain after communion, there does not remain the true body of the Lord: let him be accursed.

The presence of Christ in the eucharist, according to the Church of Rome.

Canon VIII. If any shall say, that Christ, as exhibited in the eucharist, is eaten only spiritually, and not also sacramentally and really: let him be accursed<sup>32</sup>.

Canon VI. If any shall say, that in the holy sacrament of the eucharist, Christ, the only begotten Son of God, is not to be adored even with the external worship of latria, which is due to the true God, and therefore that it is not to be venerated

Adoration of the sacrament of the eucharist, according to the Church of Rome.

<sup>29</sup> Conc. XI., 143.

<sup>30</sup> Sess. XIII. Conc. XIV., 805—809.

<sup>31</sup> Conc. XIV., 805—809; et vide etiam Art. XXVIII. of the Church of England, *contra*.

<sup>32</sup> Conc. Trent, Sess. XIII. Conc. XIV., 805—809. Sed vide Art. XXVIII. and XXIX. of the Church of England, *contra*.

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with peculiar festive celebration; nor to be solemnly carried about in procession, according to the laudable and universal rite and custom of Holy Church; or not to be publicly exhibited to the people, to be adored by them; and that its adorers are idolaters: let him be accursed<sup>33</sup>.

Reservation of  
the eucharist,  
according to the  
Church of Rome.

"If any shall say, that it is not lawful for the sacred eucharist to be reserved in the sacristy, but that immediately after consecration it must necessarily be distributed to the by-standers; or that it is not lawful for it to be carried with honour to the sick: let him be accursed<sup>34</sup>.

Preparation for  
the sacrament of  
the eucharist,  
according to the  
Church of Rome.

"If any shall say, that faith alone is a sufficient preparation for receiving the sacrament of the most holy eucharist: let him be accursed. And, lest so great a sacrament should be taken unworthily, and thus to death and condemnation, this holy synod decrees and declares, that to those, who are burdened by a consciousness of mortal sin, however they may think themselves to be contrite, sacramental confession, if a confessor can be found, is of necessity to be used beforehand. But if any one shall presume to teach, to preach, or pertinaciously assert the contrary, or even to defend it in a public disputation: let him be thereupon actually excommunicated<sup>35</sup>."

Roman Catholic  
unscriptural  
doctrine of trans-  
substantiation,  
arose from taking  
figurative words  
in a literal sense.

The unscriptural doctrine of transubstantiation, as stated by Dr. Southey<sup>36</sup>, arose from taking figurative words in a literal sense; and the Romanists do not shrink from the direct inference, that if their interpretation be just, Christ took his own body in his own hands, and offered it to his disciples. But

<sup>33</sup> Conc. Trent, A. D. 1551. Canon VI. Sess. XIII. Conc. XIV., 805—809. Sed vide Art. XXV. and XXVIII. of the Church of England, and the protest at the end of the Communion Service, *contra*.

<sup>34</sup> Conc. Trent, A. D. 1551. Canon VII. Sess. XIII. Conc. XIV., 805—809. Sed vide Art. XXVIII. of the Church of England, and Rubrick after the Communion, *contra*.

<sup>35</sup> Conc. Trent, A. D. 1551. Canon XI. Sess. XIII. Conc. XIV., 805—809. Sed vide Exhortation preparatory to the Administration of the Sacrament, as prescribed by the Church of England, and Art. XXVIII. of the Church of England, *contra*.

The Lutheran Church holds the doctrine of consubstantiation: that is, that the body of Christ is so with the bread, or in the bread, that it is actually eaten with the bread; and whatsoever motion or action the bread hath, the body of Christ has the same; so that the body of Christ may truly be said to be borne, given, received, eaten, when the bread is borne, given, received, or eaten; that is, *This is my body*.

The doctrine of the Church of England is, that the bread and wine are outward and visible signs of the body and blood of Christ, which body and blood are received and eaten in a heavenly or spiritual manner by the faithful in the Lord's Supper.—1 Short's Church Hist. 261, 262.

<sup>36</sup> Book of the Church, 187.

all minor difficulties may easily be overlooked, when the flagrant absurdity of the doctrine itself is regarded. For according to the Church of Rome, when the words of consecration have been pronounced, the bread becomes that same actual body of flesh and blood in which our Lord and Saviour suffered upon the cross; remaining bread to the sight, touch, and taste, yet ceasing to be so, . . . and into how many parts soever the bread may be broken, the whole entire body is contained in every part. And this, they pretend, is that daily bread, for which our Saviour has instructed us to pray!

The priest when he performed this stupendous function of his ministry, had before his eyes, and held<sup>37</sup> in his hands, the Makér of heaven and earth; and the inference which they deduced from so blasphemous an assumption was, that the clergy were not to be subject to any secular authority, seeing that they could create<sup>38</sup> God their Creator!

No pictures or images were allowed in Christian churches during the primitive ages. "Indeed," observes Archbishop Usher<sup>39</sup>, "in so *great account* was the use of images among them, that in the ancientest and best times, Christians would by no means permit them to be brought into their churches: nay, some of them would not so much as admit the art itself of making them; so jealous were they of the danger, and careful for the prevention of the deceit, whereby the simple might any way be drawn on to the adoring of them."

"We are plainly forbidden," saith Clemens Alexandrinus<sup>40</sup>, "to exercise that deceitful art. For the prophet saith, 'Thou shalt not make the likeness of any thing, either in heaven, or in the earth beneath.'"—"Moses commandeth men to make no image that should represent God by art<sup>41</sup>."—"For, in truth, an image is a dead matter, formed by the hand of an artificer. But we have no sensible image made of any sensible matter, but such an image as is to be conceived with the understanding<sup>42</sup>."

When Adrian the Emperor "had commanded that temples

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IMAGE WORSHIP.  
No pictures or images were allowed in Christian churches during the primitive ages.

Clemens Alexandrinus rejects the notion of image worship.

Adrian ordered temples to be made without images.

<sup>37</sup> Urban VIII., in his preface before the Missal; quoted in Hicke's True Notion of Persecution stated, 22.

<sup>39</sup> Eadmer. Acta Sanctorum Apr. tom. ii. 919. Stella Clericorum, quoted by Jeremy Taylor, vol. ix. 408.

<sup>38</sup> Answer to a Jesuit, 435.

<sup>40</sup> Clemens Alexand. Protreptic. ad Gentes.

<sup>41</sup> Pædagog. lib. iii. cap. 2.

<sup>42</sup> Clemens Alexand. in Protreptic.

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should be made in all cities without images<sup>43</sup>," it was presently conceived that he did prepare those temples for Christ, as (Elius Lampridius noteth in the "Life of Alexander Severus;" which is an evident argument that it was not the use of Christians in those days to have any images in their churches.

Illiberitane  
Council forbid  
the use of pic-  
tures in places of  
worship.

And for keeping of pictures out of the church, the Canon of the Eliberine, or Illiberitane Council, held in Spain about the time of Constantine the Great, is most plain. "It is our mind that pictures ought not to be in the church, lest that which is worshipped or adored should be painted on walls<sup>44</sup>."

Opinions of St.  
Ambrose, St.  
Jerome, and St.  
Augustine.

"The Gentiles," saith St. Ambrose<sup>45</sup>, "worship wood, because they think it to be the image of God; but the image of the invisible God is not in that which is seen, but in that which is not seen."—"God would not have himself worshipped in stones," saith the same father in another place<sup>46</sup>: and, "The church knoweth no vain ideas and divers figures of images, but knoweth the true substance of the Trinity<sup>47</sup>." So St. Jerome<sup>48</sup>: "We worship one image, which is the image of the invisible omnipotent God." So likewise St. Augustine<sup>49</sup>: "In the first commandment, any similitude of God, in the figments of men, is forbidden to be worshipped; not because God hath not an image, but because no image of him ought to be worshipped, but that which is the same thing that he is (Coloss. i. 15, Heb. i. 3), nor yet that for him, but with him." As for the representing of God in the similitude of man, he resolveth, that "it is utterly unlawful to erect any such image to God in a Christian church<sup>50</sup>."

Originators of  
image worship.

If it be inquired who they were, that first brought in this use of images into the church, it may well be answered, that they were partly lewd heretics, partly simple Christians,

<sup>43</sup> Lamprid. in Alexandro.

<sup>44</sup> Concil. Elib. cap. xxxvi.

<sup>45</sup> Ambros. in Psal. cxviii. Octonar. x.

<sup>46</sup> Ibid. Epist. xxxi. ad Valentinianum Imp.

<sup>47</sup> Ibid. de Fuga Seculi, cap. v.

<sup>48</sup> Hieronym. lib. iv. in Ezech. cap. xvi.

<sup>49</sup> Augustin. Epist. cxix. ad Januar. cap. xi.

<sup>50</sup> Augustin. de Fide et Symbol. cap. vii. Vide etiam Amphiloch. citatus a Patrib. Concilii Constantinop. ann. 754. Epiphani. Epist. ad Johan. Hierosol. tom. i. Oper. Hieronym. Epist. LX. Epiphani. citatus a Concil. Constantinop. in Act. VI. tom. v. Concil. Nicæn. II. Epiphani. in Panar. Haeres. lxxix. 447.

newly converted from paganism, the customs whereof they had not as yet so fully unlearned<sup>51 52</sup>.

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At that assembly, commonly called the General Council of Nice, A. D. 787, the worship of images were decreed:—"We salute the honourable images; let them be anathema who do not."—"We honourably worship the holy and venerable images<sup>53</sup>."—"The honour rendered to the image is transmitted to the prototype; and he who worships the figure, worships the substance of that which is represented by it<sup>54</sup>."

Council of Nice  
A.D. 787, decree  
image worship.

Charlemagne, supported by almost the entire of the church, protested against the decrees of this Nicene Council, and published the "Caroline Books," stating the grounds of his objections, which were transmitted to Pope Adrian, who fruitlessly attempted to answer the objections that were urged.

To determine this controversy, a council assembled at Franckfort, A. D. 794, composed of British, Gallican, German, and Italian bishops, at which two legates from the Bishop of Rome were present.

Council at  
Franckfort,  
A. D. 794.

The Anglican and other churches considered that, as to the images of Christ, he being God as well as man, it was impossible to represent him by an image. For either the image would represent only his manhood, which would not be Christ, but merely a division of the two natures which are in him, or otherwise it must be supposed that the incomprehensible deity was comprehended by the lines of human flesh: in either case the guilt of blasphemy would be incurred. But they were also opposed to the use of all images in religious worship; considering it to be a dishonour to the saints, and a mere taint of heathenism.

The Anglican  
and other  
Churches con-  
sidered it was  
impossible to re-  
present Christ by  
an image.

It was proved to be condemned by the Scriptures, and uncountenanced by Epiphanius, Gregory, Chrysostom, Athanasius, and others, who had forbidden images altogether, not suffering them even in private houses for fear of their becoming a sort of lares, or household gods<sup>55</sup>.

Proved to be con-  
demned by scrip-  
tures.

<sup>51</sup> Archb. Usher's Reply to a Jesuit, 440, 441; et etiam *ibid.* passim, 430—445.

<sup>52</sup> Augustin. de Moribus Ecclesiæ Catholicæ, cap. xxxiv. Hincmar. Remens. lib. contra Hincmar. Laudunens. cap. xx. Egoismens Monach. in Vita Caroli Magni. Annal. Fuldens. Ado, Regino, et Hermann. Contract. in Chronic. ann. 794.

<sup>53</sup> Conc. Nice II. A.D. 787, Conc. VII., 318, 322.

<sup>54</sup> Conc. VII., 556.

<sup>55</sup> Conc. VII., 436, 440, 441, 444, 508. Perceval on Schism, 77, 78.



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The Council of  
Frankfort *reject*,  
*despise*, and *condemn* the decree  
of the Nicene  
Council.

Schismatical  
decree of the  
Council of Trent,  
A.D. 1563.

THE DOCTRINE  
OF PURGATORY.

Tertullian rejects  
the notion of  
purgatory.

St. Ambrose  
states that death  
is a passage from  
trouble to tran-  
quillity.

Upon these and other grounds, the Council at Franckfort "*rejected*," "*despised*," and "*condemned*," the decrees of the Council at Nice <sup>56</sup>.

The decrees of the Nicene Synod were again condemned at Constantinople, A.D. 814 <sup>57</sup>; and, A.D. 824, were likewise rejected by a great assembly of bishops at Paris <sup>58</sup>.

Notwithstanding these explicit rejections, the Council of Trent, A.D. 1563, unsanctioned by Scripture, made the following decree:—"The holy synod commands, moreover, that the images of Christ, of the Virgin mother of God, and of other saints, are to be especially had and retained, in the temples, and that due honour and veneration be paid to them; . . . because the honour which is shown to them, is referred to the prototypes which they represent: so that by the images which we kiss, and before which we uncover our heads, and fall down, we adore Christ and reverence the saints, whose likeness they bear. As was ordained by the decrees of the councils, but especially of the second Nicene Synod. . . . But if any shall teach, or think contrary to these decrees, let him be anathema <sup>59</sup>."

The doctrine of purgatory <sup>60</sup> has been entertained by numerous sects, but there is no necessary connexion between praying for the dead and the belief in purgatory <sup>61</sup>; in fact, a short form of prayer is inserted for the dead in the Canons of Cloveshoo <sup>62</sup>.

Tertullian <sup>63</sup> counteth it injurious unto Christ, to hold that such as be called from hence by him are in a state that should be pitied. Whereas they have obtained their desire of being with Christ, according to that of the apostle (Philip. i. 23), "I desire to depart and be with Christ."

St. Ambrose <sup>64</sup>, in his book of the "Good of Death," teacheth us that death "is a certain haven to them who, being tossed in the great sea of this life, desire a road of safe quietness;"

<sup>56</sup> "Qui supra sanctissimi patres nostri omnimodis adorationem et servitum renuentes, contempserunt, atque consentientes condemnaverunt."—Conc. VII., 1057.

<sup>57</sup> Ibid. 1299.

<sup>58</sup> Ibid. 1542.

<sup>59</sup> Conc. Trent, A.D. 1563. Sess. XXV., Conc. XIV., 895. Vide etiam Conc. VIII., 1127, 1128, et Art. XXII. of the Church of England, *contra*.

<sup>60</sup> Vide Archb. Usher's Reply to a Jesuit, 150—167.

<sup>61</sup> Bingham's An. vi. 671, 688. Soames, 324, 325, 349, 362. 1 Short's Church Hist. 26.

<sup>62</sup> Johnson's Canons, Pref. xix. ; et etiam 747.

<sup>63</sup> Tertul. lib. de Patient. cap. ix. <sup>64</sup> Ambrose de Bono Mortis, cap. iv.

that "it maketh not a man's state worse, but such as it findeth in every one, such it reserveth unto the future judgment, and refresheth with rest;" that thereby "a passage is made from corruption to incorruption, from mortality to immortality, from trouble to tranquillity<sup>65</sup>." Therefore he saith<sup>66</sup>, that where "fools do fear death as the chief of evils, wise men do desire it as a rest after labours, and an end of their evils:" and upon these grounds exhorteth us, that "when that day cometh, we should go without fear to Jesus our Redeemer, without fear to the council of the patriarchs, without fear to Abraham our father; that without fear we should address ourselves unto that assembly of saints and congregation of the righteous. Forasmuch as we shall go to our fathers, we shall go to those schoolmasters of our faith; that albeit our works fail us, yet faith may succour us, and our title of inheritance defend us<sup>67</sup>."

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Gregory Nazianzen, in his funeral orations, so far from thinking of any purgatory pains prepared for men in the other world, plainly denieth<sup>68</sup> that, after the night of this present life, "there is any purging" to be expected. And therefore he telleth us<sup>69</sup>, "that it is better to be corrected and purged now, than to be sent unto the torment there, where the time of punishing is, and not of purging."

Gregory Nazianzen, and St. Jerome, deny the doctrine of a purgatory.

St. Jerome<sup>70</sup> comforteth Paula for the death of her daughter Blæsilla, in this manner:—"Let the dead be lamented, but such a one whom Gehenna doth receive, whom hell doth devour, for whose pain the everlasting fire doth burn. Let us, whose departure a troop of angels doth accompany, whom Christ cometh forth to meet, be more grieved if we do longer dwell in this tabernacle of death; because, as long as we remain here, we are pilgrims from God."

Gennadius<sup>71</sup>, in a book wherein he purposely taketh upon him to reckon up the particular points of doctrine received by the church in his time, when he cometh to treat of the state of souls separated from the body, maketh no mention at all of purgatory, but layeth down this for one of his positions:—

Gennadius maketh no mention of purgatory.

<sup>65</sup> Ambrose de Bono Mortis, cap. iv.

<sup>66</sup> Ibid. cap. viii.

<sup>67</sup> Ibid. cap. xii.

<sup>68</sup> Nazianz. Orat. XXXII. in Pascha.

<sup>69</sup> Ibid. Orat. XV. in Plagam grandinis, indeque in locis Communib. Maximi, Sermon. XLV. et Antonii, part ii. Sermon. XCIV.

<sup>70</sup> Hieron. Epist. XXV.

<sup>71</sup> Gennad. de Ecclesiastic. Dogmatib. cap. lxxix.

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“ After the ascension of our Lord into heaven, the souls of all the saints are with Christ, and departing out of the body go unto Christ, expecting the resurrection of their body, that together with it they may be changed unto perfect and perpetual blessedness; as the souls of the sinners also, being placed in hell under fear, expect the resurrection of their body, that with it they may be thrust unto everlasting pain.”

Exposition of  
Eccles. xi. 3, by  
Olympiodorus.

In like manner, Olympiodorus, expounding that place of Ecclesiastes <sup>72</sup>, “ If the tree fall toward the south, or toward the north, in the place where the tree falleth, there it shall be,” maketh this inference thereupon <sup>73</sup>: “ In whatsoever place, therefore, whether of light or of darkness, whether in the work of wickedness or of virtue, a man is taken at his death, in that degree and rank doth he remain; either in light with the just and Christ the king of all, or in darkness with the wicked and the prince of this world <sup>74</sup>.”

Origen asserts the  
doctrine of pur-  
gatory.

About the middle of the third century, Origen asserted that the faithful (the apostles themselves not excepted) would, “ at the day of judgment, pass through a purgatorial fire;” to endure a longer or a shorter time, according to their imperfections. “ In this hypothesis, directly contrary to many express texts of Scripture,” he was followed by some great men in the Church. It appears that, A. D. 398, the doctrine of purgatory was new, as St. Augustin alludes to it, as a thing which “ possibly may be found so, and possibly never:” so likewise Bede, as “ not altogether incredible.”

St. Augustin and  
Bede.

The Cabal at Flo-  
rence make the  
doctrine of pur-  
gatory an article  
of faith, A.D.  
1438.

Towards the end of the fifth century, Pope Gregory undertook to assert this problem;—four hundred years after, Pope John XVIII., or, as some say, XIX., instituted a holyday, wherein he required all men to pray for the souls in purgatory;—at length the Cabal at Florence<sup>75</sup>, 1438, turned the dream into an article of faith.

Definition of pur-  
gatory, according  
to the Council of  
Florence.

The definition of purgatory, according to the Council of Florence is, “ If any true penitents depart this life in the love of God before that they have made satisfaction by worthy fruits of penance for faults of commission and omission, their souls are purified by the pains of purgatory, and that for their

<sup>72</sup> Eccles. xi. 3.

<sup>73</sup> Olymp. in Eccles. xi.

<sup>74</sup> Vide etiam 1 John i. 7; John v. 24; 1 Cor. xv. 18; 1 Thess. iv. 16; Rev. xiv. 13; 2 Cor. v. 6, 8; Isai. viii. 19, 20; Luke xvi. 29, 30. Anton. Meliss. part i. Sermon. LVIII. &c.

<sup>75</sup> Conc. XIII., 515.

release from these pains, the suffrages of the faithful who are alive are profitable to them: to wit, the sacrifices of masses, prayers and alms, and other works of piety, which, according to the appointment of the church, are wont to be made by the faithful for other believers<sup>76</sup>."

In 1563, the Council of Trent made the following decree, concerning indulgences. "The holy synod teaches and enjoins that the use of indulgences, being extremely wholesome for Christian people, and approved by the authority of the sacred councils, be retained in the church, and condemns with anathema those who either assert that they are useless, or deny that the church has the power of granting them, &c<sup>77</sup>."

Dr. Southey<sup>78</sup> observes, "Happily for mankind, the authority of the pope extended over purgatory. The works of supererogation were at his disposal, and this treasury was inexhaustible, because it contained an immeasurable and infinite store derived from the atonement, one drop of the Redeemer's blood being sufficient to redeem the whole human race, the rest which had been shed during the passion was given as a legacy, to be applied in mitigation of purgatory, as the popes in their wisdom might think fit. So they, in their infallibility, declared, and so the people believed! The popes were liberal of this treasure. If they wished to promote a new practice of devotion, or encourage a particular shrine, they granted to those who should perform the one, or visit the other, an indulgence, that is, a dispensation for so many years of purgatory; sometimes for shorter terms, but often by centuries, or thousands of years, and, in many cases, the indulgence was plenary. . . . a toll-ticket entitling the soul to pass scot-free."

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INDULGENCES.  
Decree made by  
the Council of  
Trent, A.D. 1563.  
Sess. XXV.

Authority of the  
Pope over purga-  
tory, and the  
grant of indul-  
gences.

<sup>76</sup> Conc. Florence, A.D. 1438, Sess. XXV.; Conc. XIII., 515, vide etiam Conc. Trent, A.D. 1563, Sess. XXV., Conc. XIV., 894. The Fathers of the Church who have borne witness against the doctrine of purgatory, are Irenæus, (Adv. Hæres. l. v. c. 5); Cyprian, (Ad Demetrian., l. 404); Athanasius, (de Virgin., i. 1056); Hilary, (Tract. in Ps. cxx. III. 24); Gregory Nazianzen, (in Plagam grandinis, 229); Gregory Nyssen, (A.D. 371, Dial. de Anim. et Resurrect. tom. II. 651); Jerome, (in Esaiam, c. 49, tom. v. 212); Cyril of Alexandria, (Comm. in Joan. Evang. lib. xii. c. 36, 1014); Leo I. (Epist. XCI. ad Theodorum, vol. v. 2, 929); Macarius, (Homil. XXII. 302); Perceval, on Roman Schism, passim. Vide etiam Art. XXXII. of the Church of England, *contra*.

<sup>77</sup> Conc. XIV., 917. Vide Art. XXII. of the Church of England, *contra*.

<sup>78</sup> Southey's Book of the Church, 184.

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## CONFESSION AND PENANCE.

Practice of the  
primitive Chris-  
tians.

St. Chrysostom  
saith, "It is not  
necessary that  
thou shouldest  
confess in the  
presence of wit-  
nesses."

St. Augustine, to  
the same effect.

Origen observes,  
"Look about  
thee diligently,  
unto whom thou  
oughtest to con-  
fess thy sin."

St. Basil noteth,  
"The very same  
course is to be  
held in the con-  
fession of sins,  
which is in the  
opening of the  
diseases of the  
body."

It was the practice of the primitive Christians<sup>79</sup>, in cases of gross sin, and when the conscience was troubled, publicly to acknowledge their misdeeds before God and man, or to make a confession to a priest, in order that they might be directed to the paths of religion, and to receive such other advice as might be requisite towards a reformed life.

Chrysostom<sup>80</sup>, in alluding to confession saith, "It is not necessary that thou shouldest confess in the presence of witnesses: let the inquiry of thy offences be made in thy thought; let this judgment be without a witness; let God only see thee confessing."—"Therefore I intreat and beseech and pray you, that you would continually make your confession to God. For I do not bring thee into the theatre of thy fellow-servants, neither do I constrain thee to discover thy sins unto men: unclasp thy conscience before God, and show thy wounds unto him, and of him ask a medicine. Show them to him that will not reproach, but heal thee. For although thou hold thy peace, he knoweth all<sup>81</sup>."

St. Augustine<sup>82</sup> also expresses himself to the same effect. "What have I to do with men that they should hear my confessions, as though they should heal all my diseases?"

Origen<sup>83</sup> saith, "Look about thee diligently unto whom thou oughtest to confess thy sin. Try first the physician, unto whom thou oughtest to declare the cause of thy malady, who knoweth to be weak with him that is weak, to weep with him that weepeth, who understandeth the discipline of condoling and compassionating; that so at length, if he shall say anything, who hath first showed himself to be both a skilful physician and a merciful, or if he shall give any counsel, thou mayest do and follow it."

For as St. Basil<sup>84</sup> well noteth, "The very same course is to be held in the confession of sins, which is in the opening of the diseases of the body. As men therefore do not discover the diseases of their body to all, nor to every sort of people, but to those that are skilful in the cure thereof; even so ought the

<sup>79</sup> Bingham's Ant. vi. 371, viii. 117, 130. Johnson's Canons, 994, 30.

<sup>80</sup> Chrysost. Homil. de Penitent. et Confession, tom. v, edit. Latin. Col. 901, edit. Basil. ann. 1558.

<sup>81</sup> Id circa finem, Hom. V. *περὶ ἀκατάληπτου*, de incomprehensib. Dei Natur. tom. VI. edit. Græc. D. Hen. Savil, 424, et tom. v. 262, 263. Archb. Usher's Reply to a Jesuit, 77.

<sup>82</sup> Aug. Confess. lib. x. cap. 3.

<sup>83</sup> Orig. in Psal. xxxvii. Hom. II.

<sup>84</sup> Basil. in Regul. brevioribus Resp. 229.

confession of our sins to be made unto such as are able to cure them, according to that which was written<sup>85</sup>, ‘Ye that are strong, bear the infirmities of the weak,’ that is, take them away by your diligence;” and to the same effect saith Origen<sup>86</sup>, “If he understand and foresee that thy disease is such as ought to be declared in the assembly of the whole Church, and cured there, whereby, peradventure both others may be edified, and thou thyself more easily healed; with much deliberation, and by the very skilful counsel of that physician, must this be done.”

St. Chrysostom<sup>87</sup> in expounding 1 Cor. xi. 28:—“Let a man examine himself, and so let him eat of that bread, and drink of that cup:”—saith, “Let every one examine himself, and then let him come. He doth not bid one man to examine another, but every one himself; making the judgment private, and the trial without witnesses;” and in the end of his second homily of fasting (which, in others, is the eighth de Penitentia), frameth his exhortation accordingly<sup>88</sup>: “Within thy conscience, none being present but God, who seeth all things, enter thou into judgment, and into a search of thy sins, and recounting thy whole life, bring thy sins unto judgment in thy mind: reform thy excesses, and so with a pure conscience draw near to that sacred table, and partake of that holy sacrifice<sup>89</sup>.”

Respecting absolution, even St. Chrysostom says, “None can forgive sins but God alone<sup>90</sup>.” “To forgive sins belongeth to no other<sup>91</sup>.” “To forgive sins is possible to God only<sup>92</sup>.” “God alone doth this; which also he worketh in the washing of the new birth<sup>93</sup>.” Wherein that the work of cleansing the soul is wholly God’s, and the minister hath no hand at all in effecting any part of it. Optatus proveth at large, in his fifth

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Exposition of  
1 Cor. xi. 28, by  
St. Chrysostom.

Ansoterio:  
St. Chrysos  
says, “Non  
in  
forgive sins but  
God alone.”

<sup>85</sup> Vide Archb. Usher’s Reply to a Jesuit, 74—99.

<sup>86</sup> Origen in Psal. xxxvii. tom. ii.

<sup>87</sup> Chrysost. in 1 Cor. xi. Homil. XXVIII.

<sup>88</sup> Idem. tom. vi. Savil, 837.

<sup>89</sup> Psal. xxxii. 5, 6; 2 Sam. xxiii. 1; 2 Chron. vi. 37, 39; 1 Kings viii. 47, 50; Luke xviii. 13, 14; Heb. xii. 9; 1 John i. 9; Jerem. viii. 22; Jam. v. 16. Greg. Exposit. ii. Psal. Penitent. Bas. in Psal. xxxviii. Ambros. lib. x. Comment. in Luc. cap. xxii. Gloss. de Penit. Distinct. i. cap. 2. Saucymæ. Socrat. Hist. lib. v. cap. xix.

<sup>90</sup> Chrysost. in 2 Corinth. iii. Homil. VI.

<sup>91</sup> Idem. in Johan viii. Homil. LIV. edit. Græc. vel. LIII. Latin.

<sup>92</sup> Id. in 1 Cor. xv. Homil. XL.

<sup>93</sup> Chrysost. in 1 Cor. xv. Homil. XL.

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Optatus proves that "None can wash the filth and spots of the mind, but He who is the framer of the same mind."

book against the Donatists; showing that "none can wash the filth and spots of the mind but He who is the framer of the same mind;" and convincing the heretics, as by many other testimonies of holy Scriptures, so by that of Isaiah i. 18, which he presseth in this manner<sup>94</sup>: "It belongeth unto God to cleanse, and not unto man;" he hath promised by the prophet Isaiah, that he himself would wash, when he saith, 'If your sins were as scarlet, I will make them as white as snow.' I will make them white, he said; he did not say, I will cause them to be made white. If God hath promised this, why will you give that, which is neither lawful for you to promise, nor to give, nor to have? Behold, in Isaiah, God hath promised that he himself will make white such as are defiled with sins, not by man<sup>95</sup>."

The doctrine of Gregory the Great.

This doctrine was held by the Church of Rome<sup>96</sup>; for Gregory the Great, upon Psalm xxxii. 5, "I said, I will confess my transgressions unto the Lord; and thou forgavest the iniquity of my sin," conceived the following to be a sound paraphrase<sup>97</sup>, "Thou who alone sparest, who alone forgivest sins. For who can forgive sins but God alone<sup>98</sup>?"

The Roman Catholic Church, to acquire political power, makes the absolution of a priest necessary for salvation.

The Church of Rome, in order to wield a greater political influence, by acquiring a knowledge of all the earthly concerns of its votaries, but without any Scriptural authority, declared that, there was no hope of pardon from God, except through confession, and the absolution of a priest; and the priest consequently assumed the character of a judge, as well as that of an adviser.

Decree of Innocent III., concerning confessions. A.D. 1215.

The decree of Innocent III., concerning confessions, is contained in Canon XXI. of those which are designated as being under the IV. Lateran Council: "Let every believer of both sexes, after he has come to years of discretion, faithfully make solitary confession of all his sins, at least once in the year, to his own priest, and study to the utmost of his power to fulfil the penance enjoined him, reverently receiving the sacrament of the eucharist, at least at Easter, unless, per-

<sup>94</sup> Optat. lib. v.

<sup>95</sup> Archb. Usher's Reply to a Puritan, 99—150.

<sup>96</sup> Ibid. 100. 1 John i. 9. Rom. v. 4.

<sup>97</sup> "Tu, qui solus parcis, qui solus peccata dimittis. Quis enim potest peccata dimittere, nisi solus Deus?" Gregor. Exposit. II. Psalmi Penitential.

<sup>98</sup> Euthym. cap. xiii. in Matt. Chrysost. in Matt. ix. Homil. XXIX. Græc. Novatian. de Trinitat. cap. xiii. Athanas. Orat. III. cont. Arian tom. i. 239. Ambros. Epist. LXXXVI. ad Studium. Optat. lib. v. contra Donatist. August. Tract. IV. in 1 Johan III.; et Nov. Test. passim.

chance, at the advice of his own priest, he shall be induced to abstain from the receiving it, for a time, on some reasonable account; otherwise let him, while living, be denied entrance into the church; and, at death, be deprived of Christian burial." . . . .

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By Canon VII. of the Council of Trent, those were to be accursed who did not affirm that sacramental confession to the priests of every sin was ordained by Christ, and was by divine authority necessary for forgiveness. And, by Canon IX. those were to be accursed, who affirmed that, the sacramental absolution of the priest was a ministerial, and not a judicial, act<sup>99</sup>.

The Council of Trent, A.D. 1551, accurses those who deny that, the absolution of a priest is not a judicial act.

It was from "confession and absolution," that the See of Rome was enabled to acquire her almost boundless influence—because, from the improper exercise of this authority, the fear of human laws became the only restraint upon evil propensities, when men were taught to believe that, the account with divine justice might easily be settled<sup>100</sup>;—and what moral power can be compared with that of him, to whom every criminal act, every idle word, every guilty thought, is laid open; from whom no secret may be witholden; and from whom pardon, if received at all, must be received?

Its effect upon the practical morality of private life was equally pernicious; for if modesty was brought with a female to confession, it was a crime that rendered her unworthy of absolution, although many questions in confession were such<sup>101</sup>, that no mother, be she never so abandoned, would have inquired of her daughter; in fact, they were of so vile and filthy a character, that, either in a moral or worldly sense, they could only have excited the uttermost of disgust in the breasts of husbands and of fathers, mingled with sentiments

Questions in confession, of a character the most immoral.

<sup>99</sup> Sess. XIV. Conc. XIV., 815—826.

<sup>100</sup> Tables were actually set forth by authority, in which the rate of absolution for any imaginable crime was fixed, and the most atrocious might be committed with spiritual impunity for a few shillings. The foulest murderer, and parricide, if he escaped the hangman, might, at this price set his conscience at ease concerning all further consequences.—Southey's Book of the Church, 187.

<sup>101</sup> The questions, which a priest was required by express injunctions, to put to married and unmarried females, were so disgustingly obscene, so repellant to every received notion of innate female modesty, even in the most depraved, that these pages cannot be polluted by their transcription. Those who are desirous of receiving positive proof respecting this statement, are referred to Theolog. Dog. et Mor. Ludo. Bailly. Lugduni, 1818, tom. vi. 265, 268—272, 283; et etiam Theolog. Mor. et Dog. Petri Deus, tom. iv. 380; tom. vi. 239, 240; tom. vii. 147, 149, 150, 153.



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of dark suspicion :—for those who are versed in the frailties of human nature must be aware, that impropriety of discourse between the sexes, invariably engenders criminal propensities; and the pages of history afford cogent evidence, that priests can rarely support the character of impeccable beings.

**PENANCES.**  
Generally imposed by the clergy.

The penances generally imposed by the clergy, were fasting, wandering, laying aside arms, and external pomp, a change of clothes, not allowing iron to come near the nails or hair, and, though last not least, alms deeds<sup>102</sup>.

**NECESSITY OF  
THE PRIEST'S INTENTION.**  
Council of Trent,  
A.D. 1547. Sess.  
VII.

The Council of Trent, in 1547, was the first that decreed the necessity of the priests' intention for the validity of the sacraments :—thus, by Canon XI., "If any shall say, that there is not required in the ministers, while they perform and confer the sacraments, at least the intention of doing what the Church does : let him be accursed." By this doctrine the priest can prevent any person from participating in the ordinances of salvation<sup>103</sup>.

**DISPENSATION  
WITH THE LEVITICAL DEGREES OF  
CONSANGUINITY.**  
**DISSOLUTION  
OF MARRIAGE.**

Those also were to be accursed, who said that, the church had not power to dispense with the Levitical degrees of consanguinity as impediments to marriage<sup>104</sup>,—who denied that marriage solemnized, but not consummated, was dissolved by the religious profession of one of the parties<sup>105</sup>,—and those who denied that the saints departed, were to be invoked<sup>106</sup>.

**INVOCATION OF  
SAINTS.**

**Roman Catholic  
schismatic doctrines unrecognised by the primitive church.**

Mr. Perceval states<sup>107</sup>, that no one single council, general or provincial, or one single ecclesiastical writer, layman or clerk, in the first seven centuries, can be cited, which will prove, that assent has been enforced to any of the Roman Catholic schismatic doctrines on pain of anathema, or taught an assent to any one of them to be essential to salvation, or required an assent to any one of them, as a term, of communion.

**ROMAN CATHOLIC  
DOCTRINES OF  
CHRISTIAN CHARITY AND TOLERATION.**

In conclusion, Canon III. of the IV. Lateran Council, will portray Roman Catholic notions of "Christian charity" and "universal toleration : " thus,—

"We excommunicate and anathematize every heresy which exalteth itself against this holy, orthodox, and Catholic faith, which we have set forth above: condemning all heretics,

<sup>102</sup> Johnson, 963, 64. Ib. 67. 1 Short's Church Hist. 37.

<sup>3</sup> Conc. XIV., 776—779. Perceval, Hist. Not. 22, 23.

<sup>4</sup> Conc. Trent, A.D. 1563, Sess. XXIV. Canon III. Conc. XIV., 873—875.

<sup>105</sup> Canon VII. VIII. IX. Ibid.

<sup>66</sup> Decree, Conc. Trent, A.D. 1563, Sess. XXV. Conc. XIV., 895.

<sup>67</sup> Perceval on Schism, Introd. xxviii.

by whatsoever names they may be reckoned : who have indeed diverse faces, but their tails are bound together, for they make agreement in the same folly.

“ Let such persons, when condemned, be left to the secular powers who may be present, or to their officers, to be punished in a fitting manner, those who are of the clergy being first degraded from their orders ; so that the goods of such condemned persons, being laymen, shall be confiscated ; but in the case of clerks, be applied to the churches from which they received their stipends.

“ But let those who are only marked with suspicion, be smitten with the sword of anathema, and shunned by all men until they make proper satisfaction, unless, according to the grounds of suspicion, and the quality of the person, they shall have demonstrated their innocence by a proportionate purification ; so that if any shall persevere in excommunication for a twelvemonth, thenceforth they shall be condemned as heretics. And let the secular powers, whatever offices they may hold, be induced and admonished, and, if need be, compelled by ecclesiastical censure, that, as they desire to be accounted faithful, they should, for the defence of the faith, publicly set forth an oath, that to the utmost of their power they will strive to exterminate from the lands under their jurisdiction all heretics who shall be denounced by the church<sup>108</sup> ; so that whensoever any person is advanced, either to spiritual or temporal power, he be bound to confirm this decree with an oath.

“ But if any temporal lord, being required and admonished by the church, shall neglect to cleanse his country of this heretical filth, let him be bound with the chain of excommu-

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**1547—1553.**

Excommunicated persons to be left to the secular powers.

Those who are only marked with suspicion, to be smitten with the sword of anathema.

Extermination of heretics.

Penalties, if a temporal lord neglects to cleanse his country of heretical filth.

<sup>108</sup> “ We do, in the behalf of Almighty God the Father, and the Son, and the Holy Ghost, and with the authority of the blessed apostles, Peter and Paul, and with our own, excommunicate and anathematize all Hussites, Wickliffites, Lutherans, Zuinglians, Calvinists, Huguenots, Anabaptists, Trinitarians, and apostates from the faith of Christ, and all and sundry other heretics, by whatsoever name they may be reckoned, and of whatever sect they may be ; and those who believe in them, and their receivers, abettors, and, generally speaking, all their defenders whatsoever ; and those who, without the authority of us and of the apostolic see, knowingly read, or retain, or imprint, or in any way defend books containing their heresy, or treating of religion, let it be from what cause it may, publicly or privately, under any pretence or colour whatsoever ; as also the schismatics, and those who *pertinaciously withdraw themselves or recede from obedience to us and the Roman pontiff for the time being.*”—Extract from the Bull in *Cæna Domini*. Constil. Paul V. 63, published at Rome every Maunday Thursday, cited by Perceval on Schism, Introd. xxxvii.

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Vassals absolved  
from their alle-  
giance.

Indulgence to  
those who exter-

Punishment of  
the receivers,  
defenders, and  
abettors of hero-  
tics.

Clergy forbidden  
to administer the  
sacraments to  
such pestilent  
persons.

nication, by the metropolitan, and the other co-provincial bishops. And if he shall scorn to make satisfaction within a year, let this be signified to the supreme pontiff: that, thenceforth, he may declare his vassals to be absolved from their fidelity to him, and may expose his land to be occupied by the Catholics, who, having exterminated the heretics, may, without contradiction, possess it, and preserve it in purity of faith: saving the right of the chief lord, so long as he himself presents no difficulty, and offers no hinderance in this matter: the same law, nevertheless, being observed concerning those who have not lords in chief.

“ But let the Catholics, who, having taken the sign of the cross, have girded themselves for the extermination of the heretics, enjoy the same indulgence, and be armed with the same privilege as is conceded to those, who go to the assistance of the Holy Land.

“ But we who believe, decree also, to subject to excommunication, the receivers, the defenders, the abettors of the heretics: firmly determining that if any one, after he has been marked with excommunication, shall refuse to make satisfaction within a twelvemonth, he be thenceforth of right in very deed infamous, and be not admitted to public offices or councils, nor to elect for any thing of the sort, nor to give evidence. Let him also be intestible, so as neither to have power to bequeath, nor to succeed to any inheritance.

“ Moreover, let no man be obliged to answer him in any matter, but let him be compelled to answer others. If, haply, he be a judge, let his sentence have no force, nor let any causes be brought for his hearing. If he be an advocate, let not his pleading be admitted. If a notary, let the instruments drawn up by him be invalid, and be condemned with their damned author. And we charge that the same be observed in similar cases. But if he be a clerk, let him be deposed from every office and benefice, that where there is the greatest fault, the greatest vengeance may be exercised.

“ But if any shall fail to shun such persons, after they have been pointed out by the church, let them be compelled, by the sentence of excommunication, to make fitting satisfaction. Let the clergy by no means administer the sacraments of the church to such pestilent persons, nor presume to commit them to Christian burial, nor receive their alms nor oblations: otherwise let them be deprived of their office, to which they

must not be restored without the special indulgence of the apostolic see<sup>109</sup>."

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For the understanding the New Testament, Erasmus's "Paraphrase," which was translated into English, was thought the most profitable and easiest book. Therefore it was resolved, that, together with the Bible, there should be one of these in every parish church over England.

PROGRESS OF THE  
REFORMATION  
UNDER EDWARD  
VI.

The articles and injunctions given to the visiters were, the greatest part of them, only the renewal of those which had been ordered by Henry VIII.<sup>110</sup>; so that all the orders renouncing the pope's power, and asserting the king's supremacy; about preaching, teaching the elements of religion in the vulgar tongue; the benefices of the clergy, and the taxes on them for the poor, for scholars, and their mansion-houses; with the other injunctions for the strictness of churchmen's lives; and against superstitions, pilgrimages, images, or other rites of that kind, and for register-books, were renewed.

ARTICLES AND  
INJUNCTIONS FOR  
THE VISITATION  
UNDER EDWARD  
VI.

To these many others were added: as, that curates should take down such images as they knew were abused by pilgrimages or offerings to them, but that private persons should not do it; that in the confessions in Lent they should examine all people, whether they could recite the elements of religion in the English tongue.

Removal of  
images.

That, at high mass, they should read the epistle and gospel ... English; and every Sunday and holyday they should read at matins one chapter out of the New Testament, and at evensong another out of the Old, in English. That the curates should often visit the sick, and have many places of the Scripture in English in readiness wherewith to comfort them. That there should be no more processions about churches, for avoiding contention for precedence in them. And that the Litany, formerly said in the processions, should be said thereafter in the choir in English, as had been ordered by the late king.

Epistle and gos-  
pel to be read  
in English.

Visitation of the  
sick.

Litany to be read  
in English.

That the holyday being instituted at first that men should give themselves wholly to God; yet God was generally more dishonoured upon it than on the other days, by idleness, drunkenness, and quarrelling, the people thinking that they sufficiently honoured God by hearing mass and matins, though

Regulations as to  
holydays.

<sup>109</sup> Conc. XI., 147—149. Perceval on Schism, 133—138. Vide etiam 2 Petri Dens Theolog. 77—83, 88, 89.

<sup>110</sup> 2 Burnet, 50, 51. 2 Collier, 241. Heylin, 55.

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1547—1553.

they understood nothing of it to their edifying; therefore thereafter the holyday should be spent according to God's holy will, in hearing and reading his holy word, in public and private prayers, in amending their lives, receiving the communion, visiting the sick, and reconciling themselves to their neighbours. Yet the curates were to declare to the people, that in harvest-time they might upon the holy and festival days labour in their harvest.

Admission to the  
communion.

That curates were to admit none to the communion who were not reconciled to their neighbours. That all dignified clergymen should preach personally twice a year. That the people should be taught not to despise any of the ceremonies not yet abrogated, but to beware of the superstition of sprinkling their beds with holy water, or the ringing of bells, or using blessed candles for driving away devils.

Monuments of  
idolatri re-  
moved.

That all monuments of idolatry should be removed out of the walls or windows of churches, and that there should be a pulpit in every church for preaching. That there should be a chest with a hole in it for the receiving the oblations of the people for the poor; and that the people should be exhorted to almsgiving, as much more profitable than what they formerly bestowed on superstitious pilgrimages, trentals, and decking of images.

Disposition of  
livings; reading  
of homilies, &c.

That all patrons who disposed of their livings by simoniacal pactions, should forfeit their right for that vacancy to the king. That the homilies should be read. That priests should be used charitably and reverently for their office sake. That no other primer should be used, but that set out by King Henry. That the primer and the hours should be omitted where there was a sermon or homily. That they should, in bidding the prayers, remember the king the supreme head, the queen dowager, the king's two sisters, the lord protector, and the council, the lords, the clergy, and the commons of the realm; and to pray for souls departed this life, that at the last day we, with them, may rest both body and soul. All which injunctions were to be observed, under the pains of excommunication, sequestration, or deprivation, as the ordinaries should answer it to the king, the justices of the peace being required to assist them.

Injunctions to  
the bishops.

Beside these, there were other injunctions given to the bishops, "that they should see the former put in execution, and should preach four times a year in their dioceses; once at

their cathedral, and three times in other churches, unless they had a reasonable excuse for their omission. That their chaplains should be able to preach God's word, and should be made labour off in it; that they should give orders to none but such as would do the same; and if any did otherwise, that they should punish them, and recall their licence."

The first act of the legislature was the abolition of the mass, by Stat. 1 Edward VI., c. 1, in which the value of the holy sacrament, commonly called the sacrament of the altar, and in the Scripture the supper and table of the Lord, was set forth, together with its first institution; but from its having been contemptuously abused in sermons, discourses, and songs (in words not fit to be rehearsed), it was enacted that, in future, such offenders were to suffer fine and imprisonment at the king's pleasure; and justices of the peace were to take informations, and make presentments of those so offending, within three months after the commission of their offences, but were to allow witnesses for the purgation of the accused.

And it being more agreeable to Christ's first institution, and the practice of the church for five hundred years after Christ, that the sacrament should be given in both the kinds of bread and wine, rather than in one kind only, therefore it was enacted, that it should be commonly given in both kinds, except necessity did otherwise require it. And it being also more agreeable to the first institution, and the primitive practice, that the people should receive with the priest, than that the priest should receive it alone; therefore, the day before every sacrament, an exhortation was to be made to the people to prepare themselves for it, in which the benefits and danger of worthy and unworthy receiving were to be expressed: and the priests were not without a lawful cause to deny it to any who humbly asked it.

Thus, by restoring the communion to its primitive institution, the mass was abolished, with all its abuses and superstitions.

The next statute was 1 Edward VI., c. 2, which, after reciting that the way of choosing bishops by *congé d'élire* was tedious and expensive, and that there was not a shadow of election in it; enacted that, bishops should in future be made by the king's letters patent, upon which they were to be consecrated; that since all jurisdiction, both spiritual and temporal, was derived from the king, the bishop's courts, and

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1547—1553:

COMMUNION RESTORED TO ITS PRIMITIVE INSTITUTION.

Stat. 1 Edward VI. c. 1.

Sacrament to be given in both the kinds of bread and wine.

Abolition of the mass.

ELECTION OF BISHOPS.

Stat. 1 Edward VI. c. 2.

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all processes, should be from henceforth carried on in the king's name, and be sealed by the king's seal, as it was in the other courts of common law, excepting only the Archbishop of Canterbury's courts, and all collations, presentations, or letters of orders, were to pass under the bishop's proper seals as formerly.

It will be perceived that, under this statute, the spiritual dignity is conferred by consecration, and that the king no more interfered with the priestly offices, than the lay patron of a living does, with the ordination of a candidate whom he nominates to it.

Stat. 1 Edward VI. c. 12, repealing statutes concerning doctrine and matters of religion.

Then follows Stat. 1 Edward VI., c. 12, which repeals Stat. 5 Richard II., Stat. 2, c. 5, and Stat. 2 Henry V., c. 7, that had been made against the Lollards, and had been put in execution in the last reign; it repeals Stat. 25 Henry VIII., c. 14, concerning the punishment of heretics and Lollards; the Statute of the Six Articles, 31 Henry VIII., c. 14; Stat. 34 and 35 Henry VIII., c. 1, relating to the books of the Old and New Testament in English, the printing, reading, having, or selling them; and also Stat. 35 Henry VIII., c. 5, which qualifies the Statute of the Six Articles.

The king's  
supremacy.

These statutes, and every other act of parliament concerning doctrine and matters of religion, were also repealed and made void. By the same act there are penalties inflicted on those who deny the king's supremacy, or affirm that the Bishop of Rome, or any other person, is, or ought to be, by the law of God, supreme head of the Church of England and Ireland.

SUPERSTITIOUS  
ESTABLISHMENTS  
FINALLY DE-  
STROYED.

Stat. 1 Edward VI. c. 14.

The superstitious establishments were finally destroyed by Stat. 1 Edward VI., c. 14, the preamble to which stated, that great superstition had arisen from ignorance of the true way of salvation by the death of Christ, and by the vain opinions of purgatory and masses satisfactory, and which derived support from trentals and chantries. That the converting these to godly uses, such as the endowing of schools, provisions for the poor, and augmenting of places in the universities, should be committed to the care of the crown. And after reciting Stat. 37 Henry VIII., c. 4, it was enacted, that the king should have such chantries, colleges, and chapels, as were not possessed by the late king, and all that had been in being for the then preceding five years; as also all revenues belonging to any church for anniversaries, obits, and lights, together with all guild lands which any fraternity of men enjoyed for obits, or the like; and to appoint these to be converted to the

maintenance of grammar-schools or preachers, and for the increase of vicarages.

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There are several exceptions in this statute, which saved some of the least objectionable of these institutions, (stripped, however, of their superstitions,) and such as were only included in the expressions of the Act, but not in its design; as the universities and colleges for learning and piety

Exceptive provisions.

The Romish clergy, in order to promote their temporal power, always celebrated the mass in Latin, by which the people were impressed with the idea of some mysterious "charm" in these rites, and thus checked in them any deviation from the paths of superstition and ignorance. But Stat. 2 and 3 Edward VI. c. 1, effectually rectified this abuse, by regulating the uniformity of service, and administration of the sacraments. The preamble of which sets forth, "that there had been several forms of service, and that of late there had been great difference in the administration of the sacraments, and other parts of divine worship; and that the most effectual endeavours could not stop the inclinations of many to depart from the former customs, which the king had not punished, believing they flowed from a good zeal. But, that there might be one uniform way over all the kingdom, the king, by the advice of the lord protector and his council, had appointed the Archbishop of Canterbury, with other learned and discreet bishops and divines, to draw an order of divine worship, having respect to the pure religion of Christ, taught in the Scripture, and to the practice of the primitive church; which they, by the aid of the Holy Ghost, had with one uniform agreement, concluded on, and set forth in a book intituled, 'The Book of the Common Prayer, and administration of the Sacraments, and other rites and ceremonies of the Church, after the use of the Church of England.'"

ACT OF UNIFORMITY, 2 and 3 Edward VI. c. 1.

Uniformity of service, and administration of the sacraments.

The Book of Common Prayer.

Wherefore, the parliament, having considered the book, and the things that were altered or retained in it, they gave their most humble thanks to the king for his care about it; and did pray, that all who had formerly offended in these matters, except such as were in the Tower of London, or the prison of the Fleet, should be pardoned. And did enact, that all divine offices should be performed according to it; and that such of the clergy as should refuse to do it, or continue to officiate in any other manner, should, upon the first conviction, be imprisoned six months, and forfeit a year's profit of their benefice;

All divine offices to be performed according to it.



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for the second offence, to forfeit all their church preferments, and suffer a year's imprisonment; and for the third offence, should be imprisoned during life. And those that wrote or printed articles against it, or threatened any clergymen for using it, were to be fined in 10% for the first offence; 20% for the second; and to forfeit all their goods, and be imprisoned for life, upon a third offence. Only at the Universities they might use it publicly in Latin and Greek, excepting the office of the communion. It was also lawful to use other psalms or prayers, taken out of the Bible, so those in the book were not omitted.

CELIBACY OF THE  
CLERGY.

The examples of the apostles, and the early practice of the Christian church, recognised the marriage of the clergy<sup>111</sup>.

The custom of  
the Greek  
Church.

In 325, the Council of Nice refused to make any restrictive canons respecting the celibacy of the clergy; and Paphnutius said, "Do not make the yoke of priesthood grievous, for marriage is honourable in all, and the bed undefiled"<sup>112</sup>. The Council of Gangra, A. D. 451, decreed, "If any one shall contend against a married presbyter, that it is not fitting to communicate in the oblation when he celebrates the holy offices, let him be accursed"<sup>113</sup>. The custom of the Greek Church was settled at the Council of Trullo, 692<sup>114</sup>, in which it was ordained that bishops only should separate themselves from their wives, while all other orders were allowed to dwell with them; and the Church of Rome was rebuked for the contrary law. Notwithstanding these facts, the I. Lateran Council, A. D. 1123<sup>115</sup>, prohibited presbyters, deacons, subdeacons, and monks from contracting marriages, and by Canon VII. of II. Lateran Council, A. D. 1139<sup>116</sup>, Rome decreed, "We command that no one hear the masses of those, whom he may know to be married." In 1563, the Council of Trent decreed, "those were to be accursed who said that the clergy could contract marriage"<sup>117</sup>.

Illustrations of  
the impolitic  
laws of Rome,  
respecting cel-  
ibacy.

No better illustration can be given of these unscriptural and impolitic laws of Rome, and the vicious propensities of the clergy, than the canons which ordain "that no woman should approach the altar while mass was saying"<sup>118</sup>; and that no woman, not even a *mother*, should live in the house with a priest, lest the visits of other women should tempt him to sin"<sup>119</sup>.

<sup>111</sup> Bingham, ii. 152.

<sup>112</sup> Conc., II. 246, 248.

<sup>113</sup> Ibid. 419.

<sup>114</sup> Bingham, ii. 158.

<sup>115</sup> Canon III. et XXI. Conc. X., 896, 899.

<sup>116</sup> Conc., X. 1003, 1004.

<sup>117</sup> Sess. XXIV. Conc. XIV., 873—875.

<sup>118</sup> Johnson's Canons, 960, 44.

<sup>119</sup> Ibid. 994, 12.

Even at the present day, it is questionable whether the church of Rome esteem the celibacy of the clergy an apostolical tradition, or an ecclesiastical law; *i.e.*, whether it can or cannot be dispensed with by the authority of the church<sup>120</sup>; but at the Council of Trent<sup>121</sup>, it was honestly argued that, the principal reason why priests were forbidden to marry was, that married priests will, through their affection to their wives and families, and the ties thus formed with their countries, lose that dependance on the apostolic see which constituted the strength of the ecclesiastical hierarchy.

As there was no scriptural objection to the marriages of the clergy, and moreover from the people having practically experienced, that although the laws of Rome prevented priests from having wives of their own, yet it did not prevent them from having the wives of other men: parliament justly enacted by Stat. 2 and 3 Edward VI. c. 21, that all laws, canons, constitutions, and ordinances, which had forbidden marriage to any ecclesiastical or spiritual person, who by God's law might lawfully marry, should be void; and that the performance of marriage, where engagements had been made, should be fulfilled.

The Stat. 32 Henry VIII. c. 38, (only as far as concerned pre-contracts,) was repealed by Stat. 2 and 3 Edward VI. c. 23; and the ecclesiastical judge was authorized to give sentence for solemnization of marriage, upon a pre-contract, as before that statute. The foregoing statutes were for the purposes of instituting the principles of the Reformation, but henceforth a species of severity commenced against the old superstitions.

By Stat. 3 and 4 Edward VI. c. 10, it was enacted, that since the Common Prayer had been set forth, containing nothing but the pure word of God<sup>122</sup>, the corrupt, vain, untrue, and superstitious services should be disused; and therefore all antiphonales, missals, grayles, processional, manuals, legends, pies, portuasses, primers in Latin or English, couchers, journals, ordinals, and all other books or writings should from thenceforth be abolished and extinguished; that all persons and bodies corporate having any such books or images, taken out of churches or chapels, were to destroy such images, and within three months, to deliver such books to the bishop of the

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It is questionable whether the Church of Rome esteem the celibacy of the clergy an apostolical tradition, or an ecclesiastical law.

Marriages of clergymen legalized.  
Stat. 2 and 3 Edward VI. c. 21.

ECCELESIASTICAL JUDGE AUTHORIZED TO GIVE SENTENCE FOR SOLEMNIZATION OF MARRIAGE.  
Stat. 2 and 3 Edward VI. c. 23.

SUPERSTITIOUS SERVICES TO BE DISUSED.  
Stat. 3 and 4 Edward VI. c. 10.  
Suppression of missals, &c.

<sup>120</sup> Jurieu's Conc. Trent, 487. 1 Short's Church Hist. 38, et seq.

<sup>121</sup> Fr. Paul, 635.

<sup>122</sup> Vide ante Stat. 2 and 3 Edward VI. c. 1, 245.

**EDWARD VI.  
1547—1553.**

**REFORMATION OF  
THE ECCLESIASTICAL LAWS.**

Stat. 3 and 4  
Edward VI. c.  
11.

**CONSECRATION OF  
THE MINISTERS  
OF THE CHURCH.**  
Stat. 3 and 4 Ed-  
ward VI. c. 12.

**NEW ARTICLES  
OF RELIGION.**

Assertion of the  
Trinity, &c.

Nothing to be  
held as an article  
of faith, unless  
sanctioned by the  
Scriptures.

The three creeds.

Original sin.

diocese, or his commissary, to be destroyed; and persons who omitted so to do, were to forfeit for every book 20s. for the first offence, 4*l.* for the second, and for the third, imprisonment at the king's will.

"For putting to utter oblivion," the usurped authority of the See of Rome, as well as for the necessary administration of justice, the king was empowered, by Stat. 3 and 4 Edward VI. c. 11, during three years, to appoint thirty-two persons to examine the ecclesiastical laws, and reform them; and by Stat. 3 and 4 Edward VI. c. 12, to appoint six prelates, and six other persons, to draw up a form and manner of making and consecrating archbishops, bishops, priests, deacons, and other ministers of the church.

In 1552, articles of religion were prepared and subsequently published, in which the doctrine of the church was cast into a short and plain form, and the errors formerly introduced in the time of popery, or of late broached by the Anabaptists and enthusiasts of Germany, were discarded; the niceties of schoolmen, or the peremptoriness of the writers of controversy, were also avoided; but leaving in matters that were more justly controvertible, a liberty to divines to follow their private opinions, without thereby disturbing the peace of the church<sup>123</sup>; in truth, these articles were, in some respects, a compromise of opinions, rather than an abstract and inflexible standard of faith.

They began with the assertion of the blessed Trinity, the incarnation of the eternal Word, and Christ's descent into hell; grounding this last on these words of St. Peter, of his *preaching to the spirits that were in prison*. The next article was about Christ's resurrection. The fifth, about the Scriptures containing all things necessary to salvation; so that nothing was to be held an article of faith that could not be proved from thence. The sixth, that the Old Testament was to be kept still.

7. For the receiving the three creeds; the Apostles', the Nicene, and Athanasius' Creed; in which they went according to the received opinion, that Athanasius was the author of that creed, which is now found not to have been compiled till near three ages after him.

8. Makes original sin to be the corruption of the nature of all men descending from Adam; by which they had fallen

from original righteousness, and were by nature given to evil ; but they defined nothing about the derivation of guilt from Adam's sin. EDWARD VI.  
1547—1553.

9. For the necessity of prevailing grace, without which we have no free will to do things acceptable to God. Prevailing grace.

10. About Divine grace, which changeth a man, and yet puts no force on his will. Divine grace.

11. That men are justified by faith only ; as was declared in the homily. Justification by faith.

12. That works done before grace are not without sin. Works before grace.

13. Against all works of supererogation. Works of supererogation.

14. That all men, Christ only excepted, are guilty of sin. Universal sin.

15. That men who have received grace may sin afterwards, and rise again by repentance. Repentance.

16. That the blaspheming against the Holy Ghost is, when men out of malice obstinately rail against God's word, though they are convinced of it, yet persecuting it ; which is unpardonable. Blasphemy.

17. That predestination is God's free election of those whom he afterwards justifies, which though it be matter of great comfort to such as consider it aright, yet it is a dangerous thing for curious and carnal men to pry into ; and, it being a secret, men are to be governed by God's revealed will. They added not a word of reprobation. Predestination.

18. That only the name of Christ, and not the law or light of nature, can save men. Name of Christ.

19. That all men are bound to keep the moral law. Moral law.

20. That the church is a congregation of faithful men, who have the word of God preached, and the sacraments rightly administered, and that the Church of Rome, as well as other particular churches, have erred in matters of faith. The church defined.

21. That the church is only the witness and keeper of the word of God : but cannot appoint anything contrary to it, nor declare any articles of faith without warrant from it. Powers of the church in articles of faith.

22. That general councils may not be gathered without the consent of princes : that they may err, and have erred, in matters of faith :—and that their decrees in matters of salvation have strength only as they are taken out of the scriptures. General councils.

23. That the doctrines of purgatory, pardons, worshipping of images and relics, and invocation of saints, are without any warrant, and contrary to the scriptures. Doctrines of purgatory.

24. That none may preach or minister the sacraments, Ministration of the sacraments.

EDWARD VI.  
1547—1553.

Religious ser-  
vices to be in  
English.

The sacraments.

No dependance  
on the ministers.

Baptism.

The Lord's  
supper.

Propitiatory  
sacrifice.

Marriage of the  
clergy.

Excommuni-  
cation.

Observance of  
ceremonies.

Reading of  
Homilies.

Book of Common  
Prayer.

Supremacy of  
the king.

without he be lawfully called by men who have lawful authority.

25. That all things should be spoken in the church in a vulgar tongue.

26. That there are two sacraments, which are not bare tokens of our profession, but effectual signs of God's good will to us; which strengthen our faith, yet not by virtue only of the work wrought, but in those who receive them worthily.

27. That the virtue of these does not depend on the minister of them.

28. That by baptism we are the adopted sons of God; and that infant baptism is to be commended, and in any ways to be retained.

29. That the Lord's supper is not a bare token of love among Christians, but is the Communion of the body and blood of Christ: that the doctrine of transubstantiation is contrary to scripture, and hath given occasion to much superstition; that a body being only in one place, and Christ's body being in heaven, therefore there cannot be a real and bodily presence in his flesh and blood in it; and that this sacrament is not to be kept, carried about, lifted up, nor worshipped.

30. That there is no other propitiatory sacrifice, but that which Christ offered on the cross.

31. That the clergy are not by God's command obliged to abstain from marriage.

32. That persons rightly excommunicated are to be looked on as heathens, till they are by penance reconciled, and received by a judge competent.

33. It is not necessary that ceremonies should be the same at all times; but such as refuse to obey lawful ceremonies, ought to be openly reprov'd as offending against law and order, giving scandal to the weak.

34. That the Homilies are godly and wholesome, and ought to be read.

35. That the Book of Common Prayer is not repugnant, but agreeable to the Gospel, and ought to be received by all.

36. That the king is supreme head under Christ; that the bishop of Rome hath no jurisdiction in England: that the civil magistrate is to be obeyed for conscience' sake; that men may be put to death for great offences; and that it is lawful for Christians to make war.

37. That there is not to be a community of all men's goods ; but yet every man ought to give to the poor according to his ability. EDWARD VI.  
1547—1553.

No community  
of goods.

38. That though rash swearing is condemned, yet such as are required by the magistrate may take an oath.

Swearing con-  
demned.

39. That the resurrection is not already past, but at the last day men shall rise with the same bodies they now have.

The resurrection.

40. That departed souls do not die ; nor sleep with their bodies, and continue without sense until the last day.

Departed souls.

41. That the fable of the millenaries is contrary to Scripture, and a Jewish dotage.

Fable of the  
Millenaries.

42. The last condemned those who believed that the damned, after some time of suffering, shall be saved<sup>124</sup>.

Punishment of  
the damned.

After the form of ordination and the alteration of the Prayer Book was completed, Stat. 5 and 6 Edward VI. c. 1. was enacted, which begins by stating that many persons refused to come to their parish churches, and other places, where prayer and the administration of the sacraments and preaching were used : it enacts, therefore, that all persons shall faithfully *endeavour themselves* to resort to their parish church or chapel, where the common prayer and such service were used, upon every Sunday and holy-day, and there abide during the time of common prayer, and preaching, upon pain of the censures of the church, which the bishops were solemnly in God's name required to see executed ; and were thereby empowered to reform and punish all such offences. And because, says the statute, many doubts had arisen about the same service, "*rather by the curiosity of the minister and mistakers, than of any other worthy cause,*" the king had caused the Book of Common Prayer to be faithfully perused and made perfect, and now annexed it, so explained and perfected, to this act ; at the same time adding a form and manner of consecrating archbishops, bishops, priests, and deacons, to be of like force and authority as the former, with the same provisions as by Stat. 2 and 3 Edward VI. c. 1, were ordained ; which statute is declared to be in force for establishing this book, now explained and perfected, and the form of consecration and ordination. Any person being present at any other form of prayer than according to this book, is, for the first offence, to be imprisoned six months ; for the second, a whole

ACT OF UNI-  
FORMITY.

Stat 5 and 6 Ed-  
ward VI. c. 1.

The Book of  
Common Prayer.

<sup>124</sup> 2 Burnet, 308. Strype's Cranmer, 272, 293. 4 Wilk. Conc. 79.

EDWARD VI.  
1547—1553.

Stat. 5 and 6 Edward VI. c. 3.  
Appointment of  
fasts and feasts.

Marriage of the  
clergy, true, just,  
and lawful  
matrimony.

Stat. 5 and 6 Edward VI. c. 12.

A factious party  
existed who were  
determined to  
oppose the pro-  
gress of the  
Reformation.

year; and for the third, during life; for the better observation of this act, curates were directed once a year to read it on a Sunday in the church, *at the time of the most assembly*.

The next statute (chap. 3), appoints the fasts and feasts, as they are now in the calendar.

The last statute made upon the occasion of these alterations in religion, was Stat. 5 and 6 Edward VI. c. 12, to confirm and explain Stat. 2 and 3 Edward VI. c. 21, concerning the marriage of priests. The statute says, that evil-disposed persons had taken occasion, from certain words in that act, to say that it was but a *permission, as usury, and other unlawful things*; and therefore, that children, born of such nuptials, should rather be accounted bastards than legitimate. To avoid this slander, the statute enacts positively, that a marriage of priests and spiritual persons is true, just, and lawful, to all intents and purposes, and their children legitimate, as any other born in wedlock, as to inheritance, and every other legal right.

It was upon these acts of parliament and convocation that the reformed church stood at the death of Edward VI.<sup>125</sup>, but a factious party existed, who were determined to oppose the progress of the Reformation. This was naturally to be anticipated, because the Roman Catholic religion possessed a deceitful but specious antidote to gratify every lust of our fallen nature, and to soothe every anxiety respecting our eternal salvation.

#### SECTION IV.

MARY, July 6, A.D. 1553,—November 17, A.D. 1558.

- |                                                                           |                                         |
|---------------------------------------------------------------------------|-----------------------------------------|
| 1. The perfidious and tyrannical Character of Mary.                       | 3. Popular Statutes, and Trial by Jury. |
| 2. Interference by the Crown in Parliamentary Elections, and its Results. | 4. Municipal Institutions.              |
|                                                                           | 5. Pecuniary Impositions.               |
|                                                                           | 6. Punishment by Torture.               |

#### 1. *The perfidious and tyrannical Character of Mary.*

MARY.  
1553—1558.

Church of Rome  
received a mortal  
blow by the trans-  
lation of the  
Bible.

Commerce and civilization had been advanced by the salutary laws of Edward VI. The mummerly of the Church of Rome had received a mortal blow by the translation of the Bible into the English language, and thereby the members of the Anglican Church, again became acquainted with a pure system of religion and morality.

Science, by enlarging the mind, had detected the vanity and deceit of popish superstition, and the visitations of the monasteries had exposed the hypocritical and lascivious lives of the clergy.

As there is no faith to be kept with heretics<sup>1</sup>, it is needless to enumerate the system of unprovoked cruelty which was adopted during this reign, against the disciples of the reformed faith<sup>2</sup>, the savage barbarity on the one hand, and the patient constancy on the other, are so familiar in all those martyrdoms, that the narrative, little agreeable in itself, is hardly susceptible of variety.

Human nature appears not on any occasion so detestable, and at the same time so absurd, as in these religious persecutions, which sink men below infernal spirits in wickedness, and below the beasts in folly,—more particularly, it being a happy law of our moral nature, that persecution spreads the persecuted belief, and multiplies its adherents, though it may largely destroy them, and eventually disperse many to take root and flourish elsewhere; accordingly, the effect of the executions of this reign was what the sufferers trusted it would be, not what the persecutors intended and expected. “It seemed as if the martyrs bequeathed to their friends and followers, like Elijah the prophet, a double portion of their spirit, from the flames amid which they ascended to their everlasting reward<sup>3</sup>.”

Mary, in order to acquire the requisite power to wreak vengeance upon her religious opponents, commenced her reign with two wilful falsehoods, first, by promising the men of Suffolk that the laws of Edward VI. should not be rescinded; Secondly, pledging herself to “the Privy Council” that religious toleration of all sects should be unequivocally maintained<sup>5</sup>.

MARY.  
1553—1558.

A system of unprovoked cruelty was adopted during this reign.

Persecution spreads the persecuted belief, and multiplies its adherents.

Mary commenced her reign with two wilful falsehoods.

there returned public and solemn thanks for it, to the merciful Parent and Saviour of Men. And the same unchristian scene was represented in a splendid sculpture, with this inscription “The Triumph of the Church.”

<sup>2</sup> Five bishops, twenty-one divines, eight gentlemen, eighty-four artificers, one hundred husbandmen, servants, and labourers, twenty-six wives, twenty widows, nine virgins, two boys, two infants, were brought to the stake, besides those who were punished by imprisonment, fines, and confiscations. Speed's Hist. Engl. 852.

<sup>3</sup> Southey's Book of the Church, 339. <sup>4</sup> 4 Hume, 370, 376. <sup>5</sup> Ibid. 376.



MARY.  
1553—1558.

Illustrations of  
the religious prin-  
ciples of Mary.

Heretics can be  
compelled by cor-  
poral punish-  
ment to return to  
the faith.

Heretics can be  
compelled to hold  
the faith.

Not always expe-  
dient for the  
church to use her  
rights.

Heretics punish-  
able with death.

The religious principles of Mary may be illustrated from Dens' Theology, from which it appears, that the Roman Catholic church considered them embers of the English Catholic church, as actually worse than either Jews or Pagans<sup>6</sup>.

That unbelievers who had been baptized as heretics and apostates generally were, and also baptized schismatics, *could be compelled, by corporal punishment, to return to the Catholic faith, and the unity of the church*<sup>7</sup>.

That to receive the faith was of the will, but to hold it when received, was of necessity; and therefore *heretics* can be compelled to hold the faith<sup>8</sup>.

Meantime *it was not always expedient* that the church should use this right<sup>9</sup>.

That *heretics* were justly punished with death<sup>10</sup>; because forgers of money or other disturbers of the state were justly punished with death, therefore also *heretics*, who are forgers of the faith, and, as experience testifies, grievously disturb the state<sup>11</sup>.

That this was confirmed, because God, in the Old Testament, ordered the false prophets to be slain; and in Deut. chap. xvii. v. 12, it is decreed that if any one will act proudly, and will not obey the commands of the priest, let him be put to death<sup>12</sup>.

The same being proved from the condemnation of the 14th article of John Huss, in the Council of Constance<sup>13</sup>.

<sup>6</sup> 2 Theolog. Mor. et Dog. Petri Dens. Ex typ. R. Coyne, Dublin, 1832, 77—79.

<sup>7</sup> Infideles baptizati quales esse solent heretici (Vide ante infra, 239, Constit. Paul V. 73, as to the definition of heretics,) et apostata, item, schismatici baptizati, cogi possunt, etiam poenis corporalibus, ut revertantur ad finem catholicum et unitatem ecclesie.

<sup>8</sup> Respondetur cum St. Thomâ, "sicut vovere est voluntatis, reddere autem necessitatis; ita accipere fidem est voluntatis, sed acceptam tenere est necessitatis," atque adeo heretici compelli possunt ut fidem teneant.

<sup>9</sup> Interim non semper expedit ut ecclesia hoc jure utatur prout patebit ex infra dicendis. (2 Dens' Theol. 79—81, passim.)

<sup>10</sup> An heretici recte puniuntur morte?

<sup>11</sup> Respondet: S. Thom. 2. 2. quæst. 11, art. 3, in corp. affirmativè: quia falsarii pecunie, vel alii rempublicam turbantes justè morte puniuntur; ergo etiam heretici qui sunt falsarii fidei, et experientiâ, teste rempublicam graviter perturbant.

<sup>12</sup> Confirmatur ex eo quod Deus in veteri lege jusserit occidi falsos prophetas. Et Deut. cap. xvii. v. 12, statuatur, ut "qui superbiierit nolens obedire sacerdotis imperio"—moriatur. (Vide etiam, cap. 18.)

<sup>13</sup> Idem probatur ex condemnatione articuli 14, Jona Huss, in Concilio Constantiensi. (2 Dens' Theol. 89.)

"It having now become expedient that the Church should use her rights," surprise cannot be excited, that Mary, as a practical proof of the sincerity of her promises to the men of Suffolk and to the privy council, should, the moment she was established upon the throne, regulate her administration as if the country had been recently conquered, and that no established constitution existed<sup>14</sup>, and that such statutes as interfered with the ascendancy, should be treated as null and void. Thus the queen, by her edict, in the month of October, presented to two hundred and fifty-six livings, restoring all those turned out under the Acts of Uniformity; the Latin Liturgy was restored; and the married clergy expelled from their livings; Protestant ministers, for no other crime than their religion, were incarcerated in prison; the bishopric of Durham, which had been dissolved by statute, was erected anew by letters patent<sup>15</sup>; and as illustrative of the prostrate spirit of the nation, a proclamation was issued in this reign, which, after forbidding the importation of heretical and treasonable publications, declares that whoever should be found possessed of such books should be reputed and taken for a rebel, and executed according to martial law<sup>16</sup>:—in fact, Mary, believing it to be her duty, acted up to the worst principles of a tyrannical "dissenting sect," and boasted she was a virgin sent by God to ride and tame the people of England<sup>17</sup>.

MARY.  
1553—1558.

The country governed as if it had been recently conquered, and that no established constitution existed.

Mary "a virgin sent by God to ride and tame the people of England."

## 2. *Interference by the Crown in Parliamentary Elections, and its Results.*

The methods adopted by Mary to influence the parliamentary elections, and to gain by corruption the members who were chosen, were carried on so openly, that the price for which each man sold himself was publicly known<sup>1</sup>.

Previous to the parliament of 1554, the queen directed a circular to the sheriffs, commanding them to admonish the

Corruption of parliament.

<sup>14</sup> 3 Strype, 50, 53. Carte, 290. Burnet, App. 257. Collier, 218.

<sup>15</sup> 4 Hume, 375. Vide etiam 3 Fox, 38. Heylin, 35. 5 Collier, lib. ii. 364.

<sup>16</sup> 3 Strype, 459. 2 Burnet, 363. Heylin, 79. 4 Hume, 419.

<sup>17</sup> Strype's Cranmer, 309. Southey's Book of the Church, 319.

<sup>1</sup> 2 Burnet, 262, 277.

MARY.  
1553—1558.

Creation and  
restoration of  
boroughs.

electors to choose good Catholics and "*inhabitants*, as the old laws require<sup>2</sup>," and the Earl of Sussex, one of her miserable tools, wrote to the gentlemen of Norfolk, and to the burgesses of Yarmouth, requesting them to reserve their voices for the persons whom he should name.

The crown, unconstitutionally to increase its influence, granted to ten boroughs the privilege of returning members of parliament, and restored two ancient boroughs; at the parliamentary elections, Protestants were driven away by violence; false returns operated to the exclusion of some; several of the most staunch Protestants were debarred the Lower House by force; and common justice was denied in Chancery to all but those who supported the infamy of the crown.

The peers in-  
creased in num-  
bers, by a partial  
nomination of  
abbots.

In the Upper House the spiritual peers were changed, and their number enlarged by a partial nomination of abbots, while the numerous places, &c., appear to have had a due effect upon the temporal in completing their apostasy<sup>3</sup>: but these methods, though they temporarily diverted the streams of national justice and pure religion, proved in the sequel like those dangerous medicines, which palliate the instant symptoms of a disease that they aggravate.

Mass performed  
before both  
Houses.

It cannot therefore excite surprise, that, during this reign, a mass of the Holy Ghost, with the attendant ceremonies, was celebrated before two of the meanest houses of parliament that ever existed, in express violation of an act of parliament, which a great proportion of those who were then present had enacted<sup>4</sup>.

Statutes of Ed-  
ward VI. relative  
to religion were  
repealed.

The statutes of Edward VI., relative to religion, were repealed<sup>5</sup>; the queen's marriage with Philip II. approved<sup>6</sup>; the sanguinary laws against heretics revived<sup>7</sup>; penal statutes against seditious words, and rumours<sup>8</sup>; and to imagine or attempt the death of the "*fond*" Philip was made treason<sup>9</sup>; the tithes and first fruits were restored to the church, with all the impropriations which remained in the hands of the

<sup>2</sup> 3 Strype, 155. 2 Burnet, 228. 5 Lingard, 70.

<sup>3</sup> 3 Burnet, 453, et seq. 3 Strype, Eccles. Mem. 154, 155. 1 Brodie, 114, 115.

<sup>4</sup> 3 Fox, 19.

<sup>5</sup> Stat. 1 Mary, Sess. II, c. 2. 5 Lingard, 31—34.

<sup>6</sup> 4 Hume, 387, 396.

<sup>7</sup> Stat. 1 and 2 Philip and Mary, c. 6.

<sup>8</sup> Ibid. c. 3; et Stat. 4 and 5 Philip and Mary, c. 9.

<sup>9</sup> Ibid. c. 10.

crown<sup>10</sup>; and all past and future sales and grants of crown lands were confirmed<sup>11</sup>.

But base as the parliaments were, and utterly reckless of the lives of their countrymen, they did not entirely sacrifice "national independence;" and they refused to invest the queen with a power to dispose of the crown, and of appointing her successor<sup>12</sup>; and the more effectually to destroy the ambition of Philip, they passed a law, by which it was declared, "that her majesty, as their only queen, should solely, and as a sole queen, enjoy the crown and sovereignty of her realms, with all the pre-eminences, dignities, and rights thereto belonging, in as large and ample a manner after her marriage as before, without any title or claim accruing to the Prince of Spain, either as tenant by courtesy of the realm, or by any other means<sup>13</sup>."

Neither could the queen prevail upon them to declare Philip presumptive heir of the crown,—to confide to him the administration of affairs,—to give their consent to his coronation<sup>14</sup>,—nor obtain subsidies to support the Emperor Charles in his wars against France<sup>15</sup>.

Notwithstanding the "piety and charity" of the age, no concessions could be obtained in favour of Rome, till parliament received explicit assurances from the queen and pope, that the abbey and church lands should remain with the present possessors: and some other favourite measures of the court were rejected by the "commons<sup>16</sup>," it being an extraordinary circumstance that, the peers supported the government in every stage of its iniquitous and accursed policy<sup>17</sup>.

The privileges of the commons, during this reign, are illustrated by one or two incidents. In 1555, several members being dissatisfied with the measures of parliament, and unable to prevent them, refused any longer to attend the house<sup>18</sup>. For this contumacy they were, after the dissolution, indicted in the Queen's Bench. Six submitted to the mercy of the court, and paid their fines; the rest traversed, but the queen died before the question was brought to an issue.

MARY.  
1553—1558.

Parliament refused to invest the queen with power to dispose of the crown;

Or to declare Philip presumptive heir of the crown, or to give their consent to his coronation.

The peers supported the government in every stage of its iniquitous and accursed policy.

Illustration of the privileges of parliament

<sup>10</sup> Stat. 2 and 3 Philip and Mary, c. 4.

<sup>11</sup> 4 Hume, 441. Lingard, 107.

<sup>12</sup> Stat. 1 Mary, Sess. III. c. 2.

<sup>13</sup> 4 Hume, 401, 402.

<sup>14</sup> Heylin, 41. Carte, 311, 322. 5 Noailles, 252. 5 Lingard, 73.

<sup>15</sup> 1 Burnet, 190, 195, 215. 1 Hallam's Const. Hist. 59.

<sup>16</sup> 4 Inst. 17. 1 Strype's Mem. 165. 4 Hume, 403.

<sup>17</sup> 4 Hume, 395.

<sup>18</sup> Baker, 322. Godwin, 348.

MARY.  
1553—1558.

Judging of the matter by the subsequent claims of the House of Commons, and by the principles of free government, this attempt of the crown was a breach of privilege; but it gave little umbrage, and was not called in question during this reign<sup>19</sup>.

Members of parliament committed for freedom of speech.

Freedom of speech was also punished: the queen, according to the statement of the Count of Noailles, committed several members to prison upon that account<sup>20</sup>; and when a member of the name of Copley was committed by the house for "irreverent words of her majesty," he was not released till the *queen* was applied to for his pardon<sup>21</sup>.

### 3. Popular Statutes; and Trial by Jury.

Enactments of popular statutes.

Popular statutes were passed, by which every species of treason not contained in Stat. 25 Edward III., Stat. 5, c. 2. and every species of felony appointed to be within the case of *præmunire*, that did not subsist before the accession of Henry VIII., were abolished<sup>1</sup>; but many clauses of the recent "Riot Act" were revived for religious persecution, and the clause of Stat. 5 and 6 Edward VI., c. 11, became repealed which required the confronting of two witnesses, in order to prove any treason.

A jury, commenced to be an effective tribunal during the reigns of Edward VI. and Mary.

The reigns of Edward VI. and Mary constitute the period when a jury commenced to be a fair and effective tribunal, by occasionally assuming the right of judging for itself; and when persons whose fate was to be determined by their verdict, reposed a degree of confidence in their integrity. In the case of Sir N. Throckmorton, the jury, with a spirit of independence superior to that of the two estates of the legislature, persisted in acquitting a state prisoner against the direction of the court, and the expressed wishes of the sovereign<sup>2</sup>.

<sup>19</sup> 4 Hume, 403, 404.

<sup>20</sup> 5 Dep. de Noail. 247, 296. 1 Burnet, 324.

<sup>21</sup> 4 Hume, 442.

<sup>1</sup> Stat. 1 Mary, Sess. I. c. 1. Stat. 1 and 2 Philip and Mary, c. 10. Vide ante 111.

<sup>2</sup> 4 Hume, 379. 5 Lingard, 34, 35.

<sup>3</sup> Hollins. 1126. 1 State Trials, 369—900. 5 Lingard, 55, 56.

The virulence of the prosecutors did not end here: The Attorney General, after the acquittal, prayed the court that the jury might be bound in recognizances to answer for their verdict. They were soon after fined and imprisoned by a sentence in the Star Chamber;—they were to pay one hundred marks a piece, and to be imprisoned till further order. It was some months before they were released, and then not without paying different compositions, according to the value of their effects; which had

#### 4. *Municipal Institutions.*

From the Patent Rolls, it appears that Mary granted no less than forty-seven municipal charters; but none of these charters gave any franchises, except such as the crown had the constitutional power to grant.

The improper interference with the parliamentary and municipal rights of election, was not directly effected by the charters of the crown, or, generally speaking, by the acts of the sovereigns who granted charters of that description, but resulted from the chicanery and sophistry of those who were from time to time desirous, from selfish interests, of perverting the borough rights, and whose efforts for that object were too often rendered effectual by the decisions of the House of Commons and the courts of law.

The charters of Mary were, in general, expressly granted to the "inhabitants," but in none of them is any mode provided of nominating, making, or admitting burgesses or citizens.

Either, therefore, the burgesses or citizens must be the "inhabitants" at large, without any restriction, selection, or previous admission, or they must be the residents presented, admitted, and enrolled at the court leet. The first is too undefined to be the acknowledged mode of acquiring burghership; and no trace of such a state of things is to be found in our law, or to be deduced from any of our institutions. The latter mode of selecting some of the inhabitants,—of pointing out a defined and recognised body,—actually existed.

There was a court leet, and at that court any inhabitant householder, paying scot and lot, ought, as a resident, to have been admitted and sworn; and there must have been a suit roll, upon which all the residents, who had been presented as such by the jury, ought to have been enrolled. Such a body has never been recognised by our laws: and the only question remains, were they the burgesses?—if they were not, who were?—what other legal mode of admitting burgesses was ever

MARY  
1553—1558.

Number of charters granted by Mary.

Elective franchise not directly interfered with by the royal charters.

Burgesses and citizens were the inhabitant householders.

in the mean time, been all inventoried and appraised by the sheriff for the purpose. (1 State Trials, 78.)

Such was the security which might be reposed in this boasted privilege of trial by a jury of equals; and such the perils under which a jury exercised its own judgment, in opposition to the inclinations of the sovereign. During the reign of the Star Chamber, the persons of jurors were no more exempted from penal sentences than those of private individuals; everything was reduced to the same level of subordination.—4 Reeves, 563, 564.

MARY.  
1553—1558.

suggested?—or what is so consistent with the facts which actually existed?

### 5. *Pecuniary Impositions.*

To satisfy the pecuniary demands of Philip, for purposes utterly foreign from the interests of England, the queen, as parliament seldom granted but a scanty supply, adopted violent and tyrannical expedients to extort money from her industrious subjects.

Loans.

A loan of 60,000*l.* was exacted from one thousand persons, on account of their riches and affection to her person; a general loan was exacted on every one who possessed 20*l.* per annum; 60,000 marks were levied on 7000 yeomen, who had not contributed to the former loan; the exportation of English cloth for Antwerp fair was prohibited, and not again permitted until the merchants had agreed to pay 60,000*l.*; and on other occasions embargoes were laid upon shipping, until the owners had agreed to give large sums of money; foreigners were forbidden to export their merchandize, for which iniquity she received 50,000*l.* from some interested merchants, and an imposition of four crowns on each piece of cloth which they should export; and such was her character, that the city of London were compelled to go security for a loan of 30,000*l.* to the city of Antwerp<sup>1</sup>.

Commerce  
shackled with  
unconstitutional  
restrictions.

Although this unprincipled queen was largely indebted to her servants, besides the loans extorted from her subjects, she, to gratify Philip, declared war against France<sup>2</sup>; and in order to support it, continued to levy money in the same arbitrary manner as heretofore.

Illegal levy of  
taxes.

She obliged the city of London to supply her with 60,000*l.* on her husband's entry; levied before the legal time a second year's subsidy voted by parliament; issued privy seals, by which she procured loans; and after equipping a fleet, seized all the corn in Norfolk and Suffolk without giving remuneration to the owners<sup>3</sup>.

Impressment,  
and the Spanish  
mode of arrest.

By these expedients, and by impressment, an army of 10,000 men was levied, and sent over to the Low Countries; and to prevent public remonstrance, some of the most influ-

<sup>1</sup> 3 Strype's Mem. 428, 558. 2 Burnet, 359. Carte, 330, 333, 337, 341. Godwin, 359. Cowper's Chronicle. 4 Hume, 423, 424.

<sup>2</sup> Ibid. 432.

<sup>3</sup> Ibid. 433.

ential gentry were imprisoned in the Tower, and lest they should be known, the Spanish practice was pursued,—they either were carried thither in the night-time, or were hood-winked and muffled by the guards who conducted them <sup>4</sup>.

MARY.  
1553—1558.

### 6. *Punishment by Torture.*

The torture is more frequently mentioned in this reign, than in all former ages of our history put together, and—probably from that imitation of foreign governments, which contributed not a little to deface our constitution in the sixteenth century—seems deliberately to have been introduced as part of the process in those dark and uncontrolled tribunals, which investigated offences against the state <sup>1</sup>.

The torture, used as a punishment.

A commission was issued in 1557, authorising the persons named in it to inquire, by any means they could devise, into charges of heresy or other religious offences, and in some instances to punish the guilty, but in others of a graver nature to remit them to their ordinaries; which seems to have been meant as a preliminary step for the introduction of the Inquisition<sup>2</sup>: and Lord North and others were enjoined, “to put to the torture such obstinate persons as would not confess, and there to order them at their discretion<sup>3</sup>.”

Preliminary steps for the introduction of the Inquisition.

Several of those who suffered death in the sixteenth century, and several also who did not suffer capitally, were, previously to their trials, inhumanly tortured,—by the common “rack,” by which their limbs were stretched, by levers, to a length too shocking to mention, beyond the natural measure of their frame; or the “hoop,” called the “scavenger’s daughter,” on which they were placed, and their bodies bent until the head and the feet met; or by confinement in the “little ease,” a hole so small that a person could neither stand, sit, nor lie straight in it; the “iron gauntlet,” a screw that squeezed the hands until the bones were crushed; by needles thrust under the nails of the sufferers; or by a long deprivation of sustenance.

The common rack, scavenger’s daughter, little ease, &c.

It adds to the atrocity of these inflictions, that in several instances, when the sufferers were put to trial, there was no

<sup>4</sup> 3 Strype’s Eccl. Mem. 377.

<sup>1</sup> Haynes, 195. 2 Burnet, App. 256. 3 Ibid. 243. 1 Hallam’s Const. Hist. 57, 201.

<sup>2</sup> 2 Burnet, 347. 2 Collier, 404. Bartoli, 250, 418. 5 Lingard, 381, 650.

<sup>3</sup> 3 Burnet, 243, 246, 247.



MARY.  
1553—1558.

Death of Mary caused by the contempt of her husband, and inability to murder her innocent sister.

The character of Mary.

legal proof established; and in some, not even any legal evidence offered to substantiate the offence, of which the party was accused<sup>4</sup>.

Thus was the nation situated, when, happily for the country and herself, this amiable queen fell a victim to bodily disease, and mental inquietude, chiefly arising from the contemptuous neglect with which she was treated by Philip; and inability to gratify her vicious appetites, with the blood of her guiltless sister<sup>5</sup>, leaving a character almost unparalleled in history, for obstinacy, bigotry, violence, cruelty, malignity, revenge, and tyranny; and, as Mr. Turner justly observes<sup>6</sup>, if ever a sovereign has reigned who exhibited the deteriorating and degrading effects of a political priesthood, with persecuting principles, to take the direction of the state government, and to make the mind of the sovereign subservient to the compulsory imposition on others of the religious system, tenets, and speculations which they choose to maintain, Mary is the person,—whose name stands on the rolls of English History, like the Pharos on the dark and dangerous rock, to warn every potentate and country, what must be timely discerned and shunned, if honour, fame, happiness, or national prosperity, be worthy of a king's pursuit, or desirable for his own satisfaction to enjoy.

#### SECTION V.

ELIZABETH, November 17, A.D. 1558,—March 24, A.D. 1603.

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|-------------------------------|-------------------------------------------------|
| 1. Prerogative of the Crown.  | 7. Liberty of the Press.                        |
| 2. Court of Star Chamber.     | 8. Undue Influence exercised over the Boroughs. |
| 3. Royal Proclamations.       | 9. Privilege of Parliament.                     |
| 4. Administration of Justice. | 10. The Reformation.                            |
| 5. Pecuniary Exactions.       |                                                 |
| 6. Impressment.               |                                                 |

#### 1. *Prerogative of the Crown.*

ELIZABETH.  
1558—1603.

The prerogative of the crown had been improperly exalted by the cunning of Henry VII., as well as by the violence of Henry VIII., and from the positions of religious and political factions, Elizabeth was enabled to govern the country, upon

<sup>4</sup> Barrington, 496. 3 Inst. 35. 1 Burnet, 342. Camd. Eliz. 476. Dalrymple's Mem. Great Britain, part ii. p. 128. 1 Butler, 401, 402.  
<sup>5</sup> 5 Noailles, passim. <sup>6</sup> 3 Turn. Hist. Eng. 373.

principles, that were utterly inconsistent with those of civil liberty<sup>1</sup>.

Although no subsidies could be raised,—no statute could be binding without parliamentary acquiescence,—and that to consider of public grievances, and to procure their redress either by law or petition to the crown, were the privileges of the lords and commons, yet in the House of Commons it was acknowledged that the queen inherited both an enlarging and restraining power; by her prerogative she might set at liberty what was restrained by statute or otherwise, and by her prerogative she might restrain what was otherwise at liberty<sup>2</sup>; that the royal prerogative was not to be canvassed, nor disputed, nor examined<sup>3</sup>, and did not even admit of any limitation<sup>4</sup>; that absolute princes, such as the sovereigns of England, were a species of divinity<sup>5</sup>; that it was in vain to attempt tying the queen's hands by laws or statutes, since by means of her dispensing power she could loosen herself at pleasure<sup>6</sup>; and that even if a clause should be annexed to a statute, excluding her dispensing power, she could first dispense with that clause, and then with the statute<sup>7</sup>.

These ignoble avowals, and the fulsome speeches of the commons, in which the queen was flattered in phrases appropriated to the Supreme Being<sup>8</sup>, were not unlike the reasoning of those savages who worship the devil; not because they love him or honour him, or expect any good from him, but that he may do them no hurt.

Parliament recognised the queen's title to the crown<sup>9</sup>,—enacted punishments for treason and slanderous reports of the queen<sup>10</sup>,—and for unlawful and rebellious assemblies<sup>11</sup>.

Tonnage and poundage were given to Elizabeth for life<sup>12</sup>,—first fruits were re-invested in the crown<sup>13</sup>,—a grant of a subsidy and two-fifteenths and a tenth were voted<sup>14</sup>,—and powers created towards the establishment of ordinances in collegiate churches and schools<sup>15</sup>.

ELIZABETH.  
1558—1603.

Recognition, that the crown possessed an enlarging and restraining power.

The cause which induced the commons to flatter the queen with disgusting flatteries.

The recognition of the title of Elizabeth to the crown.

<sup>1</sup> D'Ewes, 460, 469, 640, 644, 646, 651, 675. Strype's Parker, 125, 126. Stat. 5 Elizabeth, c. 1. <sup>5</sup> Hume, 451—492. <sup>5</sup> Lingard, 206, 622, 624.

<sup>2</sup> D'Ewes, 644, 675. <sup>3</sup> Ibid. 644, 649. <sup>4</sup> Ibid. 646, 654.

<sup>5</sup> Ibid. 649. <sup>6</sup> Ibid. <sup>7</sup> Ibid. 640, 646. <sup>5</sup> Hume, 441, *passim*.

<sup>8</sup> D'Ewes, 654, 656—659. <sup>5</sup> Hume, 442, 443.

<sup>9</sup> Stat. 1 Elizabeth, c. 3. Camden, 372. Heylin, 107, 108.

<sup>10</sup> Stat. 1 Elizabeth, c. 5, 6. <sup>11</sup> Stat. 1 Elizabeth, c. 16.

<sup>12</sup> Stat. 1 Elizabeth, c. 20.

<sup>13</sup> Stat. 1 Elizabeth, c. 4.

<sup>14</sup> Stat. 1 Elizabeth, c. 21.

<sup>15</sup> Stat. 1 Elizabeth, c. 22. <sup>5</sup> Hume, 9, *et seq.*

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1558—1603.

## 2. *Court of Star Chamber.*

Power, that threatens all alike, is not so much an object of apprehension with any particular class, as that which proceeds from a body but a little removed from itself.

The most dangerous attacks on liberty, are those which surprise, or undermine.

The most dangerous attacks on liberty, are those which surprise, or undermine; which are owing to powers given under pretence of some urgent necessity; to powers popular and reasonable, perhaps, at first, but such as ought not to become settled and confirmed by long exercise, and yet are rendered perpetual by art and management; and, in a great degree, by the nature of those powers themselves.

The Star Chamber was supported by, and gratified the lower ranks of society.

The Court of Star Chamber, an institution the most despotic, was supported by, and gratified the lower ranks of society during the reigns of Henry VII. and VIII.; because its avowed object was to bring within the sphere of justice, men whose situation raised them above the reach of ordinary jurisdiction, and against whom feelings of the utmost jealousy were entertained. From the transferences of land, increase of commerce, attainders, and forfeitures, the power and rank of the nobility gradually decreased, and in an inverse ratio that of the inferior gentry increased, and the people experienced during the reigns of Elizabeth and James the practical operation of that court, which they had essentially originated, and in the reign of Charles I. they loudly, and successfully, clamoured for its abolition, because it had become equally detrimental to themselves, as it had been to their superiors.

Elizabeth employed the court, as an instrument of tyranny.

Elizabeth employed this court to enforce her proclamations, and orders of state, the perversion of justice, pecuniary exactions, illegal commissions, grants of monopolies, impressments, and restrictions upon the press, by fines, imprisonments, and corporal severities.

## 3. *Royal Proclamations.*

A right claimed to carry into effect the spirit of the existing laws.

The crown claimed a right by proclamation to carry into effect the spirit of existing laws; and if the privy council

<sup>1</sup> Anterior to the time of the Tudors, there does not occur, either in any publication or record, so much as the mention of any court called the Court of Star Chamber: and the advocates for its antiquity are obliged to admit, that the few instances referred to by them, in proof of its antiquity, passed under the Council, as it was then called, or, as we should now denominate it, the Privy Council,—1 Brodie, 159.

conceived the public safety was endangered, the commands of the executive became paramount and absolute.

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Thus Irishmen and Anabaptists were banished the realm,—the culture of woad<sup>1</sup>,—exportation of money, corn, with other commodities, and excess of apparel, were prohibited. Erection of houses within three miles of London, on account of too great increase of the city, was forbidden, under the penalty of imprisonment and forfeiture of the materials<sup>2</sup>:—to trade with the French king's rebels, or to export victuals into the Spanish dominions, incurred the penalty of treason;—and those who were possessed of goods taken on the high seas, which had not paid custom, were enjoined to give them up, on pain of being punished as felons and pirates<sup>3</sup>.

Banishment of Irishmen, and restrictions on private rights of property.

In 1569, letters were written to the sheriffs and justices of divers counties, directing them to apprehend, on a certain night, all vagabonds and idle persons having no master, nor means of living, and either to commit them to prison, or pass them to their proper homes. This was frequently repeated, and no less than 13,000 persons were thus apprehended<sup>4</sup>.

Personal arrest.

Martial law, being then built upon no settled principles, was, as Sir Matthew Hale observes<sup>5</sup>, in truth and reality no law, but something indulged, rather than allowed as a law. It had only been legally exercised during the continuance of a rebellion, and when in force, any person was liable to be punished as a rebel, whom the provost martial, lieutenant of a county, or their deputies, suspected of guilt: but Elizabeth availed herself of this law, when no immediate danger to the state was apprehended<sup>6</sup>.

Martial law.

In 1558, a proclamation was issued, in which she ordered martial law to be used against such as imported bulls<sup>7</sup>, or even forbidden books and pamphlets from abroad<sup>8</sup>, and prohibited the questioning of the lieutenants, or their deputies, for their arbitrary punishment of such offenders, *any law or statute to the contrary in any wise notwithstanding*.

Importation of foreign bulls or books.

<sup>1</sup> Lans. MSS. xlix. 32—60. Townsend's Journ. 250. 5 Hume, 463.

<sup>2</sup> Camden, 476. 16 Rymer, 476.

<sup>3</sup> 16 Rymer, 448. 1 Hallam's Const. Hist. 322.

<sup>4</sup> 1 Strype's Annals, 535.

<sup>5</sup> Hale's Hist. Com. Law, c. 2. 2 Brady, App. 59.

<sup>6</sup> Strype's Whitgift, App. 126. 5 Hume, 454, 455. Royston MS. State Paper Office. 2 Strype's Eccles. Mem. 373, 458, 459.

<sup>7</sup> 2 Bacon's Works, 43. <sup>8</sup> 3 Strype, 570.

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artial law declared against the London vagabonds.

The streets of London being infested with vagabonds and riotous persons, whom neither the lord mayor nor the Star Chamber could remove, martial law was proclaimed, and Sir Thomas Wilford received a commission, as provost martial, "granting him authority, and commanding him, upon signification given by the justices of peace in London, or the neighbouring counties, of such offenders, worthy to be speedily executed by martial law, to attach and take the same persons, and in the presence of the said justices, according to justice of martial law, to execute them upon the gallows or gibbet openly, or near to such place where the said rebellious and incorrigible offenders shall be found to have committed the said great offences<sup>9</sup>."

#### 4. *Administration of Justice.*

Justice should be impartially administered, according to known laws.

No country can enjoy a state of freedom, unless the open administration of justice be according to known laws truly interpreted, and fair constructions of evidence; but such a state of things never existed in practice, between the sovereign and subject, when any political question was at issue, under the Tudors.

Essential principles of evidence, either unknown, or totally disregarded.

"It may be almost asserted," says the late Lord Auckland<sup>1</sup>, "that so late as the whole sixteenth and part of the seventeenth century, the first and most essential principles of evidence were either unknown, or totally disregarded. Depositions of witnesses forthcoming if called, but not permitted to be confronted with the prisoner; written examinations of accomplices living and amenable; confessions of convicts lately hanged for the same offence; hearsays of these convicts repeated at second hand from others; all these formed so many classes of competent evidence, and were received as such, in the most solemn trials, by very learned judges. It was a common and very lucrative practice of the sheriffs, to return juries so prejudiced and partial, that, as Cardinal Wolsey observed, 'they would find Abel guilty of the murder of Cain.' The judge held his office and income at the pleasure of the prosecutor; and was often actuated by an intemperate

Juries, would find "Abel guilty of the murder of Cain."

<sup>9</sup> 16 Rymer, 279, 280. 5 Hume, 456.

<sup>1</sup> "Principles of Penal Law," 2 ed. 197, 198. 1 Butler, 402, 403.

zeal for the support of the charge; as if his indignation at the offence had stifled all tenderness towards the supposed offender.

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“Thus ignorant of the forms and language of the whole process, unassisted by counsel, unsupported by witnesses, discountenanced by the court, and baited by the crown lawyers, the poor bewildered prisoner found an eligible refuge in the dreadful moment of conviction.”

Habington, who was tried in 1586, for an attempt against the life of Elizabeth, complained that two witnesses had not been brought against him, conformably to the statute of Edward VI.: but C. J. Anderson said, that he was indicted on the act of Edward III., that provision not being in force\*.

Case of Habington.

In the case of Captain Lee<sup>2</sup>, a partisan of Essex and Southampton, the court denied the right of peremptory challenge; and the Earl of Arundel was convicted of imagining the queen's death, on evidence which could only have supported an indictment for reconciliation to the Church of Rome.

Right of peremptory challenge denied.

Under Stat. 23 Elizabeth, c. 2, Udal, a puritanical clergyman, was indicted for having published a book called a “Demonstration of Discipline,” in which he inveighed against the government of bishops, and though he endeavoured to conceal his name, he was arrested upon suspicion, and tried for the offence.

Case of Udal.

It was urged that the bishops were part of the queen's political body; and to speak against them, was to attack her, and was therefore within the statute.

The judges allowed the jury only to determine the fact, whether Udal had written the book or not, and they were not permitted to examine the intention or import of the language.

Improper restrictions upon the verdict of the jury.

To prove the authorship, the law officers of the crown did not produce a single witness. They only read the testimony of two persons absent, one of whom said, that Udal had told him he was the author; another, that a friend of Udal's had said so: and the court would not allow Udal to produce any exculpatory evidence; which, they said, was never to be permitted against the crown<sup>3</sup>.

Discreditable evidence, offered by the law officers of the crown.

<sup>2</sup> 1 State Trials, 1148.

<sup>3</sup> Ibid. 1256. Ibid. 1403. 1 Hallam's Const. Hist. 313, 314.

<sup>4</sup> It was not till after the Revolution that the prisoner could legally produce evidence against the crown.—1 Black. Com. 351, 352.

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They tendered him an oath, by which he was required to depose, that he was not the author of the book; and his refusal to make that deposition, was employed as the strongest proof of his guilt,—upon which he was convicted, and received sentence of death<sup>5</sup>.

Case of Penry.

A zealous puritan, or "Independent," of the name of Penry, had written scurrilous and satirical tracts against the hierarchy. After concealing himself for some years, he was seized; and, as the statute against seditious words required that the criminal should be tried within a year after committing the offence, he could not be indicted for his printed books.

The tyrannical  
principles of  
Lord Keeper  
Pickering.

He was therefore tried for some papers found in his pocket, as if he had thereby scattered sedition<sup>6</sup>. It was also imputed to him by the Lord Keeper Pickering, that in some of these papers, "he had only acknowledged her majesty's royal power to *establish* laws, ecclesiastical and civil, but had avoided the *usual* terms of *making, enacting, decreeing, and ordaining laws*: which imply," says the Lord Keeper, "a most absolute authority." Penry for these offences was condemned, and suddenly executed<sup>7</sup>.

Jury panel ille-  
gally composed.

Punishment of  
jurors.

The crown did not exclusively rely upon "judicial perfidy," the sheriff returned the jury panel composed of selected government partisans; and if the jury gave a verdict against the crown, they seldom escaped from enormous fines and indefinite imprisonment, which were inflicted under the authority of the Star Chamber:—it is therefore obvious "juries" were then no security against political tyranny and injustice.

Impossibility of  
obtaining justice  
against the cap-  
ricious will of  
the sovereign.

The records of this period<sup>8</sup>, more particularly the trials of the Duke of Norfolk, and the persecuted, but imprudent, Queen of Scotland, establish that, no justice could by course of law be obtained against the capricious will of the sovereign; and even in the naval expedition undertaken by Raleigh and Frobisher against the Spaniards, where a carrack

<sup>5</sup> 1 State Trials, 144. 4 Strype, 21—30. Strype's Whitgift, 343, 375—377. 5 Hume, 467. 5 Lingard, 519.

<sup>6</sup> Strype's Whitgift, b. iv. c. 11. 1 Neal, 564.

<sup>7</sup> 4 Strype's Annals, 176, 177. Stow, 765. Strype's Whitgift, 410, 412, 413. 5 Lingard, 523. 5 Hume, 468.

<sup>8</sup> Harl. MSS. 703, 6995, 6996, 6997. Du Vair, apud Carte iii. 702. State Trials, 1049—1072, 1315—1334. Bridgewater, 219, 304—307. 3 Strype, 251. 4 Strype, 307. Camden, 645—647, 779. Speed, 1183. 5 Lingard, 382, 416, 519, 558, 568, 622, 624. 5 Hume, 451—492. 1 Hallam's Const. Hist. 315—318.

valued at 200,000*l.* was taken, the queen, not satisfied with her right to a tenth, insisted upon having 100,000*l.*<sup>9</sup>: and if the owners had refused compliance, they would have been imprisoned under some pretext, until they had by an enormous fine purchased their release. It cannot, therefore, be a matter of surprise, that a justice of the peace was defined in parliament to be "an animal who, for half a dozen chickens, would dispense with a dozen laws"<sup>10</sup>.

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The course of justice was likewise diverted, by the queen granting warrants, exempting particular persons from all "suits and prosecutions"<sup>11</sup>, and granting dispensations of the penal laws<sup>12</sup>.

Exemptions  
from legal pro-  
cess.

A warrant from a secretary of state, or from the privy council<sup>13</sup>, authorised a discretionary and cruel imprisonment, the prisoner not being permitted to sue out a writ of Habeas Corpus<sup>14</sup>; and the courts were prohibited from taking cognizance of such commitment.

Partial suspen-  
sion of the writ  
of Habeas Cor-  
pus.

These illegalities, *particularly where unfortunate creditors sued noble lords for their debts*, arose to such an extent, that frequently the gaols were full of prisoners of state<sup>15</sup>, and the judges presented the following remonstrance, which, although it acknowledges the right of personal freedom, does not breathe that pure spirit of liberty which the statute law would have justified, and which it was the duty of the bench to have maintained,—as they illegally acknowledge that a person committed by special command of the queen was not bailable.

Remonstrance of  
the judges.

"To the Rt. Hon. our very good lords, Sir Chr. Hatton, of the honourable order of the garter knight, and chancellor of England; and Sir W. Cecil, of the hon. order of the garter knight, Lord Burleigh, lord high treasurer of England, we, her majesty's justices, of both benches, and barons of the Exchequer, do desire your lordships, that by your good means, such order may be taken that her highnesses subjects may not be committed or detained in prison, by commandment of any nobleman or counsellor against the laws of the realm, to the grievous charges and oppression of her majesty's said subjects; or else help us to have access to her majesty, to be suitors unto her highness for the same; for divers have been im-

That the subject  
may not be de-  
tained in prison  
against the laws  
of the realm.

<sup>9</sup> 4 Strype, 128, 129.

<sup>10</sup> D'Ewes, 661—664. 5 Lingard, 622.

<sup>11</sup> 15 Rymer, 652, 708, 777.

<sup>12</sup> Murden, 325. 5 Hume, 463.

<sup>13</sup> Murden, 632. 5 Hume, 456.

<sup>14</sup> 5 Lingard, 624.

<sup>15</sup> 1 Rushworth, 511. Franklyn's Annals, 250, 251.



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**1558—1603.**

prisoned for suing ordinary actions, and suits at the common law, until they will leave the same, or against their wills put their matter to order, although some time it be after judgment and accusation.

Persons detained in prison, and no cause assigned.

“Item: Others have been committed and detained in prison upon such commandment against the law<sup>16</sup>, and upon the queen’s writ in that behalf, no cause sufficient hath been certified or returned.

When discharged lawfully in court, have been re-committed in secret places.

“Item: Some of the parties so committed and detained in prison after they have, by the queen’s writ, been lawfully discharged in court, have been oftsoones recommitted to prison in secret places, and not in common and ordinary known prisons, as the Marshalsea, Fleet, King’s Bench, Gatehouse, nor the custody of any sheriff, so as upon complaint, made for their delivery, the queen’s court cannot learn to whom to award her majesty’s writ, without which justice cannot be done.

Officers for executing the writs of the superior courts sent to prison.

“Item: Divers serjeants of London, and officers, have been many times committed to prison for lawful execution of her majesty’s writs out of the King’s Bench, Common Pleas, and other courts, to their great charges and oppression, whereby they are put in such fear, as they dare not execute the queen’s process.

Extortions by pursuivants.

“Item: Divers have been sent for by pursuivants for private causes, some of them dwelling far distant from London, and compelled to pay to the pursuivants great sums of money against the law, and have been committed to prison till they would release the lawful benefit of their suits, judgments, or executions for remedie, in which behalf we are almost daily called upon to minister justice according to law, whereunto we are bound by our office and oath.

The judges required to state when persons should be detained in or delivered from prison.

“And whereas it pleased your lordships to will divers of us to set down when a prisoner sent to custody by her majesty, her council, or some one or two of them, is to be detained in prison, and not to be delivered by her majesty’s courts or judges.

Unconstitutional declaration of the judges.

“We think that, if any person shall be committed by her majesty’s special commandment, or by order from the council board, or for treason touching her majesty’s person, [five illegible letters follow] which causes being generally returned

<sup>16</sup> 5 Hume, 465. 5 Lingard, 421—425.

into any court, is good cause for the same court to leave the person committed in custody.

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“But if any person shall be committed for any other cause, then the same ought specially to be returned<sup>17</sup>.”

The rack was a punishment resorted to in cases of suspicion, but only executed in England under a warrant of a secretary of state or the privy council<sup>18</sup>. But the council in the Marches of Wales were empowered to inflict that punishment, whenever they thought proper<sup>19</sup>.

Punishment by  
the rack.

### 5. *Pecuniary Exactions.*

Some biographers of the heartless and depraved Elizabeth, have praised her “economy;” but it appears that the pecuniary grants which she acquired from parliament amounted to twenty subsidies, thirty tenths, and forty fifteenths, which exceed the average of preceding reigns, and although she raised immense sums by dilapidation of the royal demesnes<sup>1</sup>, fines of recusants, profits of monopolies, and the monies raised by forced loans, yet “she left more debts unpaid, taken upon credit of her privy seals, than her progenitors did take, or could have taken up, that were a hundred years before her<sup>2</sup>.”

Pecuniary liabilities of Elizabeth.

Dilapidation of  
the royal demesnes.

Although Elizabeth possessed every power except that of imperatively imposing taxes; yet she often arbitrarily exacted “Loans,” and when the money was returned it was without the payment of interest. “Benevolences” were likewise another grievous imposition upon industry.

Exaction of  
loans.

Loans<sup>3</sup> were almost imperative, as a refusal to contribute,

<sup>17</sup> 58 Lansdown MSS. 87. 1 Hallam's Const. Hist. 318—320; vide etiam 1 Anderson, Rep. 297. Biographia Britannica, art. Anderson.

<sup>18</sup> 5 Lingard, 380. 5 Hume, 456. 1 Hallam's Const. Hist. 201. Cabala, 81.

<sup>19</sup> Haynes, 196. 1 La Boderie, 211.

<sup>1</sup> 16 Rymer, 141. D'Ewes, 151, 457, 525, 629. 4 Bacon, 363.

<sup>2</sup> Naunton, 88. 5 Lingard, 624, 625.

<sup>3</sup> A loan, when granted to the sovereign, came to be nearly of the same amount with a benevolence. From the condition of the debtor, he could never be compelled to do justice to his creditors; and his circumstances were such as always afforded plausible pretensions for delaying and evading repayment. Although the nature of a loan, implying a mutual transaction, appeared to exclude any idea of right in demanding it; yet the same indirect methods might easily be practised by the crown, for procuring a supply in this manner, as under the form of a benevolence. We accordingly find, that in a parliament as early as the reign of Edward III., the commons prayed the king, “that the loans which were granted to the king by many of that body may be released; and none compelled to make such

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would have incurred the vengeance of the Star Chamber<sup>4</sup>, and in a letter from the lord mayor to the council, he acquaints them, of some citizens having been committed to prison, for refusing to pay the money demanded of them<sup>5</sup>.

Purveyance and pre-emption, new-year's gifts, wardships, embargoes, and monopolies.

Purveyance<sup>6</sup> and pre-emption<sup>7</sup>; new-year's gifts<sup>8</sup>; wardships<sup>9</sup>; embargoes on merchandise<sup>10</sup>; grant of monopolies<sup>11</sup>; were also engines of oppression<sup>12</sup>, to enrich the exchequer, and when, in 1589, the House of Commons interfered to alleviate the miseries arising from purveyance, the queen expressed her displeasure, that the commons should presume to touch on her prerogative. "If there were any abuses either in imposing purveyance, or in the practice of the exchequer, she was able and willing to provide due reformation, but would not permit the parliament to intermeddle in these matters<sup>13</sup>."

The commons, alarmed at this message, appointed a committee to wait upon her majesty, to satisfy her of their humble and dutiful intentions.

No article allowed to be imported or exported without license.

The crown assumed absolute authority over all foreign trade, and would not allow any article to be imported nor exported without a license, and where the statutes laid any branch of manufacture under restrictions, the crown, by exempting one person from the laws, gave him, in effect, the monopoly of that commodity<sup>14</sup>, and which afforded a source of disgraceful profit.

Robbery of the church.

The queen was empowered, on the vacancy of any see, to seize all the temporalities, and to bestow on the bishop elect, an equivalent in the impropriations belonging to the crown. The pretended equivalent was commonly much inferior in value; and thus the crown, amidst its concern for religion,

loans for the future against his will, for that it was against reason and the franchise of the land; and that restitution might be given to those who had made the loans." The king's answer was, "That it should be done."

<sup>4</sup> Harl. MSS. 2173, 10.

<sup>5</sup> Murden, 632.

<sup>6</sup> The misery which resulted from "purveyance" is illustrated by the following statutes. Stat. 23 Edward I. c. 2; 4 Edward III. c. 4; 5 Edward III. c. 2; 10 Edward III. Stat. 2; 25 Edward III. Stat. 5, c. 21; 36 Edward III. cc. 2—6; 1 Richard II. c. 3; 6 Richard II. Stat. 2, c. 2; 23 Henry VI. c. 1.

<sup>7</sup> Camden, 388.

<sup>8</sup> 1 Strype's Mem. 137; sed vide Ayscough's MS. 4827.

<sup>9</sup> 5 Hume, 461.

<sup>10</sup> 1 Strype, 27.

<sup>11</sup> D'Ewes, 647, 648, 650, 652. <sup>12</sup> 5 Lingard, 596, 597.

<sup>13</sup> Sed vide 1 Brodie, *passim*.

<sup>14</sup> D'Ewes, 440, 444.

<sup>15</sup> 15 Rymer, 756. D'Ewes, 645.

followed the example of preceding reformers in committing depredations on the ecclesiastical revenues<sup>15</sup>.

The bishops and all incumbents were prohibited from alienating their revenues, and from letting leases longer than twenty-one years, or three lives. This law was for securing the property of the church, but as an exception was left in favour of the crown, great abuses still prevailed. It was usual for the courtiers to make an agreement with a bishop or incumbent and to procure a fictitious alienation to the queen, who afterwards transferred the lands to the person agreed on<sup>16</sup>. This method of pillaging the church was not remedied till the reign of James I.; but to Elizabeth it was a source of

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Bishops and incumbents prohibited from alienating their revenues.

The mode in which Elizabeth pillaged the church.

#### 6. *Impressment.*

Osborne<sup>1</sup> thus describes Elizabeth's method of employing the prerogative of impressment. "In case she found any likely to interrupt her occasions, she did seasonably prevent him by a chargeable employment abroad, or putting him upon some service at home which she knew to be less grateful to the people: contrary to a false maxim since practised with far worse success, by such princes as thought it better husbandry to buy off enemies, than reward friends."

This power was frequently abused, persons of education "being appointed to mean and incompatible offices, from which they were not released, except by the payment of a pecuniary imposition"; in fact, such was the state of vassalage, that the nobility could not marry<sup>2</sup>, neither were any persons allowed to enter or depart the kingdom without the permission of the executive<sup>4</sup>.

Persons of education appointed to mean and incompatible offices.

#### 7. *Liberty of the Press.*

Liberty of the press was unknown during this era:—copyright of authors, importation and sale of books were regulated by the government, and it was penal to possess any Roman Catholic treatises<sup>1</sup>.

Sale of books regulated by the government.

<sup>15</sup> 4 Strype, 215, 351.

<sup>16</sup> 1 Strype, 79.

<sup>17</sup> 5 Hume, 12.

<sup>1</sup> P. 392.

<sup>2</sup> Murden, 181. 5 Hume, 459.

<sup>3</sup> 2 Birch's Mem. 422.

<sup>4</sup> Sir John Davis upon Impositions, passim. 2 Birch's Mem. 511.

<sup>1</sup> 15 Rymer, 620. 16 Rymer, 97. Strype's Whitgift, 222, App. 94. 5 Lingard, 518. Strype's Parker, 221.

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Presses to be entered at Stationers' Hall.

Licensing of printers.

Licensing of books.

Stationers' company empowered to search houses.

In 1585, the Star Chamber published ordinances for the regulation or restriction of the press, which, after reciting that enormities and abuses of disorderly persons professing the art of printing and selling books had increased, arising from the inadequacy of the penalties hitherto inflicted; then commands every printer to certify his presses to the stationers' company, on pain of having them defaced, and suffering a year's imprisonment;—that none should print at all, under similar penalties, except in London, and one in each of the two universities;—that no printer who had only set up in his trade within six months, should exercise it any longer, nor any commence in future, until the excessive multitude of printers were diminished, and brought to such a number as the Archbishop of Canterbury and Bishop of London, for the time being, might think convenient; but whenever any addition to the number of master printers was required, the stationers' company should select proper persons to use that calling with the approbation of the ecclesiastical commissioners;—that none should print any book, matter, or thing whatsoever, until it had been first seen, perused, and allowed by the Archbishop of Canterbury, or Bishop of London, except the queen's printer, to be appointed for some special service, or law printers, for whom the license of the chief justices should alone be requisite;—that every one selling books contrary to the intent of this ordinance should suffer three months' imprisonment. That the stationers' company should be empowered to search houses and shops of printers and booksellers, and to seize all books printed in contravention of this ordinance, and to destroy and deface the presses, and to arrest and bring before the council, those who should have offended therein\*.

James extended this decree to the importation of books, and forbade the printing of any book without a license from the Archbishops of Canterbury and York, Bishop of London, or the Vice-Chancellor of one of the Universities, or of some person appointed by them.

#### 8. *Undue Influence exercised over the Boroughs.*

Elizabeth having perceived the necessity of acquiring a numerical ascendancy over the deliberations of the commons,

\* 1 Hallam's Const. Hist. 324, 325.

exerted all her energies to control those boroughs which existed<sup>1</sup>, and resorted to her prerogative for the restoration of old, and creation of new boroughs, by which she obtained the support of sixty-two new members<sup>2</sup>;—and this fact establishes that, the commons had emerged from their primary insignificance, and had become an influential assembly<sup>3</sup>.

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“Select governing bodies” were grafted into the municipal corporations, and by this unconstitutional manœuvre, the crown acquired increased parliamentary influence; and these institutions, which had been intended for the “local government of the people, within certain prescribed boundaries,” were fashioned to become the ready and effective instruments of political infamy.

Borough institutions modelled for political objects.

In the fifth year of this reign, the necessity of a supply induced the summoning of a parliament, and in order to procure an undue influence, six boroughs were summoned to send members of parliament, none of them having done so for a considerable interval, and the greater portion never having done so; but the right of election was exercised by the inhabitants paying scot and lot.

New boroughs summoned to send members of parliament.

In these boroughs the court-leet existed, and was in the full exercise of its powers, and those persons who were to return the members of parliament, the doing of which by the writ was cast upon the “burgesses,” were the same class of persons as those who were entitled to enjoy the municipal franchises. Parliamentary, but fruitless, discussions arose as to the right of these boroughs to return members, and the speaker declared to the House, that the *lord steward* had agreed, that the members should resort to the House, and show letters patent why they were returned to parliament.

Municipal and parliamentary franchises enjoyed by the same class of freemen.

The question was put upon the ground of these boroughs not having charters to show for their returning members. If their representatives were allowed to sit in consequence of their having charters, it was an admission on the part of the House, that the crown had power to grant such charters: but,

<sup>1</sup> The first time the subject of bribery appears to have been brought before the house, was in the reign of Elizabeth.

One Thomas Long gave the returning officer, and others of the borough of Westbury, four pounds, to be returned member. For this offence the borough was amerced, the member removed, and the officer fined and imprisoned. (4 Inst. 23.)

<sup>2</sup> Parl. Hist. 958. 1 Hallam's Const. Hist. 359.

<sup>3</sup> 1 Hallam's Const. Hist. 364.

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subsequently, it was rarely exercised,—resisted in the case of Newark, in the reign of Charles II., and has never since been claimed.

Sir Simon D'Ewes<sup>4</sup> treats these places as having anciently been boroughs; but, from their poverty, having neglected to return members of parliament, when they were paid wages by their constituents, they for a time lost the right of returning members. But that when the payment of wages was discontinued, many boroughs, both in the reign of Elizabeth and that of her successor, returned members which had not returned in the preceding parliaments.

The right to return members of parliament cannot be lost.

This doctrine was recognised by a committee of the House in 21 James I., that “the right of a borough to return members having once existed, can never be lost;” but they disregarded the charters of Mary, thereby negating the right of the crown to interfere by its charters with the right of returning members.

Charges of bur-  
gesses avoided.

Sir Simon D'Ewes says, that “it was very common and ordinary in former times to avoid the charges of their bur-  
gesses’ allowance in time of parliament (when the town grew into any poverty or decay); that the boroughs did either get license of the sovereign for the time being to be discharged from such election and attendance, or did by degrees *discontinue* it themselves; but of later times the knights, citizens, and burgesses of the House of Commons, for the most part bearing their own charges, many of those borough towns, who had discontinued their former privilege, by not sending, did again recontinue it (as these towns here), both during her majesty’s reign, and afterwards in the reign of King James her successor.”

Many places  
ceased to be bo-  
roughs, not keep-  
ing up the exer-  
cise of their ex-  
clusive jurisdic-  
tion.

These observations must be taken in a qualified sense. “Many places which originally returned members of parliament, discontinued sending representatives when they fell into poverty or decay,” upon the ground of their ceasing to keep up the exercise of their exclusive jurisdiction; by which they ceased to be boroughs, separate and distinct from the jurisdiction of the sheriff, and were reabsorbed into the counties.

License from the  
king to be dis-  
charged from  
parliamentary  
attendance.

“Boroughs, in order to avoid the charges of their bur-  
gesses’ allowance in parliament, obtained a license from the king to be discharged from their election and attendance;”

but those licenses were not universally acted upon, as the places obtaining them notwithstanding sent their members; whilst, on the other hand, places which had ceased to be boroughs by falling into decay, and ceasing to have an exclusive jurisdiction, altogether discontinued sending members. But the royal licenses were inoperative, for the king had no constitutional power to discharge any place from returning members as long as it continued a borough.

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The crown had the undoubted prerogative of directing within what districts the law should be locally administered, whether in the county at large, or in any particular franchise, as a city or borough; but when the king made any place a borough, all the legal consequences followed as a necessary result of law; and amongst others, that it should, in conformity with the parliamentary writ, be called upon by the sheriff's precept to return members of parliament; and thus the burgesses would be discharged from contributing to the wages of the knights of the shire. But the king could not exempt them from both; they were bound to contribute either to the one or the other; and therefore if the burgesses, by reason of the place being a borough, were released from contributing to the wages of the knights, the king could not direct that they should neither send nor pay their members whilst it continued a borough: but if he and the burgesses wished that they should be exempt from that liability, then the place must cease from being a borough, and, as the consequent, become contributory to the knights of the shire.

Prerogative of  
the king to create  
boroughs.

With respect to the "members having begun to pay their own charges," it proves that the being returned a member of the House had then, in public estimation, lost its character of being a burden, and had become an object of desire to persons of station and property.

An object of desire to become a member of the commons.

In 13 Elizabeth, a new parliament being assembled, nine other places, which had not returned members in the preceding parliament, were summoned, and sent representatives; and at a subsequent period in this reign, twelve other boroughs were also newly summoned to parliament, and three boroughs restored.

Creation and restoration of boroughs.

When Elizabeth perceived the impolicy of increasing the number of boroughs, her only alternative was to bring the existing boroughs under obedience; and this was unconstitutionally effected by creating "select bodies" in the "corpo-

Origin of "select bodies," in municipal corporations.



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rations," and then recognizing, under this false claim of prescription, that existing corporations possessed the exclusive right of electing their own officers, and in some instances the members of parliament,—which will account for the charters of Elizabeth commencing with recitals that, the boroughs had been anciently incorporated; and for modern usages at variance from the charters having been supported under the plea of prescription.

Origin of the  
usurpations and  
conflicting usages  
in boroughs.

The queen having granted the "parliamentary franchise" to these boroughs for an abstract political object, it cannot be regarded as a matter of surprise, that, from this period, usurpations and conflicting usages arose in the ancient and modern boroughs in order to crush or promote conflicting interests and which produced such disgraceful anomalies in the "parliamentary and municipal institutions."

Anxiety of the  
crown to bring  
the commons  
under its com-  
mand.

The anxiety which the crown evinced in order to bring the "commons" under its command, by the intervention of "select bodies" and the "corporations," will be perceived by the following extracts.

Burgesses of  
Wells com-  
manded to elect  
fit parliamentary  
representatives.

In 1570, a letter from Sir Hugh Powlett was written in the queen's name to the burgesses of *Wells*, desiring them to elect fit persons as burgesses of parliament at peril of the queen's displeasure.

Sir Francis Wal-  
singham to have  
the nomination  
of the burgesses  
of Colchester.

In 1584, the bailiffs, aldermen, and common council of *Colchester*, to serve the queen's grace, made the following extraordinary order:—"That Sir Francis Walsingham shall have the nomination of both the burgesses of the town, for the parliament, for time to come, according to his honor's letters to the bailiffs, aldermen, and common council of the town directed:" whereupon two persons were returned according to the order<sup>5</sup>.

Earl of Leicester  
requests the no-  
mination of one  
of the members  
for Andover.

In 1584, the burgesses of Andover received the following letter from the Earl of Leicester, high steward of the borough:—"After my heartie commendations, whereas it has pleased her majesty to appoint a parliament to be presently called, being steward of your town, I make bould heartily to pray you, that you would give me the nomination of one of your burgesses for the same; and if mynding to avoid the charges of allowance for the other burgesse, you mean to name anie that is not of your towne, if you will bestow the nomination of the other burgesse also on me, I will thank you for it; and will

<sup>5</sup> M. and S. Hist. of Boroughs, 1346.

both appoint a sufficient man, and *see you discharged of all charges in that behalfe*. And so praying your speedy answer herein, I thus bid you right heartie farowell. From the courte, the 13th October, 1584.

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“ Your loving friend, R. LEICESTER.

“ *If you will send me your election, with a blank, I will put in the names.*

“ To my loving friends the bailiffs, and *the rest of the towne of Andover*.”

In 1587, the mayor and burgesses of Beccalston are stated in the Return at the Rolls Chapel, to have elected their two burgesses at the request of William, Marquis of Winchester, and William, Lord Mountjoye, chief lords of the borough. A decisive proof of the direct influence which prevailed in this borough, immediately after it was summoned to parliament.

Burgesses of Beccalston elected at the request of the chief lords of the borough.

It is stated by Mr. Butler<sup>7</sup>, that five candidates were nominated by the court to each borough, and three to each county; and by the sheriff's authority, the members were chosen from amongst those nominees;—but there are no records to establish this fact.

The queen, however, released the burgesses of Carrickfergus from the trouble of selecting one of their representatives, by granting a charter commanding them to return two members to her parliament in Ireland; and that because Edward Waterhouse was secretary to her lord deputy in Ireland, and had supplicated her, so she granted that he should *be free of the corporation*, and that he *should be returned as one of the burgesses for that town, to every parliament of her, her heirs, and successors, within Ireland, from time to time to be held*.”

Burgesses of Carrickfergus released from selecting one of their representatives.

The greatest encroachments on the constitutional rights of the inhabitant householders, were effected by giving privileges to “non-residents;” and who, in modern times, were the corrupt tools of faction and political profligacy.

Illegal privileges of non-residents.

Not only were the burgesses who elected members of parliament at this time resident in their respective boroughs, but the *members* were also required to be resident, and it was only in 13 Elizabeth, a bill was brought into parliament for the validity of burgesses being elected, who were *not resiant*.

Electors and elected required to be residents.

<sup>6</sup> M. and S. Hist. Boroughs, 1393, 1394; vide etiam Southwell MSS. Orrey, Campbell and Walpole Papers.

<sup>7</sup> Book Rom. Cath. Church, 225; sed vide 1 Hallam's Const. Hist. 361.

<sup>8</sup> M. and S. Hist. Boroughs, 1463.

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"It was urged<sup>9</sup>, that it behoveth all those who were burgesses to see to the bill; for this may touch and overreach their whole liberties as not having whereunto to stay, but that *lord's letters* would from henceforth bear all the sway.

Mr. Norton urges the impolicy of electing only residents as representatives.

"Mr. Norton, in support of the bill, urged the imperfection of choice, which was too often seen, by sending of unfit men; and lest happily anything might be objected to the imperfection of parliament, which may seem to be scant sufficient, by reason of the choice made by boroughs for the most part of *strangers* (whereas, by the positive law, no man ought to be chosen burgess for any borough, but only residents and inhabitants). That the choice should be of such as were able and fit for so great a place and employment, without respect of privilege of place or degree; for that, by reason of his being a burgess, it might not be intended or thought he was anything the wiser. Withal, he argued that, the whole body of the realm, and the good service of the same, was rather to be respected, than the private regard of place, or the privilege or degree of any person." And this is a recognition of the early constitutional principle, that each member of the House of Commons is deputed to serve, not only for his constituents, but for the whole kingdom<sup>10</sup>.

CASE OF CORPORATIONS.

In 40 Elizabeth, the celebrated "Case of Corporations" occurred,—the results of which have been so mischievous, and the judgment of which was so much opposed to the principles of the constitution, that it can only be regarded as a "political job."

The authority of the select bodies to make bye-laws, recognised.

It affirms the authority of the select bodies; their power of making bye-laws; the binding nature of such bye-laws when actually made, or when proved by usage; and establishes the dangerous doctrine of usage, commencing within the time of legal memory being evidence of right: and it is upon the authority of this case that, the varied and illegal usages in the different boroughs have been supported; in opposition to the language of the charters.

The Case of Corporations ought not to have been recognised by courts of law.

The courts of law had no right to recognise the authority of this case, because being only an opinion to the queen in council, it was not open to a writ of error or appeal, and could not under any circumstances be considered as a legal authority. But the judges of the land, previous to the Brunswick dynasty, were

<sup>9</sup> D'Ewes' Journal, 168.

<sup>10</sup> Vide ante infra, 133.

as "politically dishonest and corrupt" as any other class, and justice was administered in a manner the most disreputable; but such a state of things is not to be regarded with astonishment, when Elizabeth and other sovereigns of England received bribes, in order to pollute the pure streams of justice<sup>11</sup>.

To this reign may therefore be ascribed the origin of the illegal powers assumed by the "common councils," or "select bodies;" in derogation from the rights of the inhabitant householders; its subsidiary effects have been tainted with baseness and perfidy, pure and unalloyed; for all the subsequent controversies upon corporate ordinances, have related to the particular privileges of a corrupt and select body, against the constitutional liberties of the subject, the bye-laws of such bodies, being impressed with the wretched stamp of political depravity, and in violation of our dearest birthrights.

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Origin of the  
illegal powers  
assumed by the  
"common coun-  
cils."

### 9. *Privilege of Parliament.*

The best illustration of the "independence of the commons," is by the following extracts, relative to liberty of speech, and personal security, which at the same time afford a conclusive answer to those fanciful theorists, who descant upon the imprescriptible rights of the commons, and the untarnished freedom of our institutions.

Illustrations of  
the "imprescrip-  
tible rights of the  
commons."

In 1581, the chancellor, on confirming a new speaker, admonished him that the House of Commons should not intermeddle in anything touching her majesty's person or estate, or church government; and when they appointed a public *fast*, though to be enforced on none but themselves, this encroachment on the supremacy was only expiated by a public apology<sup>1</sup>.

The House of  
Commons apolo-  
gize for advising  
a fast without  
the permission of  
the queen.

<sup>11</sup> 5 Lingard, 623. Hobbes, from this practice having been so universal, contends that, he whose private interest is to be decided in an assembly, may make as many friends as he can, and though he procures them with money, yet it is not injustice.

It must, however, be a pleasing reflection to those of the present age, that it is impossible for justice to be more effectively or impartially administered than it is at this moment; and whatever the puriency of modern innovation may suggest, it is to be anxiously desired that the powers and emoluments of the judges of the land be ever unimpaired, more particularly as the judicial bench is the only bulwark we possess, against public or private aggression, and as long as its independency and efficiency is secured, so long only will the scales of justice be equally balanced, and our constitutional rights unendangered.

<sup>1</sup> D'Ewes, 282.

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Restriction from  
discussing eccle-  
siastical causes.

In 1588-9, the speaker received orders that the House were not to extend their privileges to any irreverent or misbecoming speech; and when Mr. Dampont moved<sup>2</sup>, "neither for making of any new laws, nor for abrogating of any old ones, but for a due course of proceeding in laws already established, but executed by some ecclesiastical governors contrary both to their purport and the intent of the legislature, which he proposed to bring into discussion," the secretary of state, reminded the House of the queen having inhibited them from dealing with ecclesiastical causes, which prevented any further notice of the motion.

The commons  
    speak  
    what  
he listeth  
what com-  
into his brain to  
utter."

The speaker of the session which was summoned in 1593, received for answer to his request for liberty of speech, that it was granted, "but not to speak every one what he listeth, or what cometh into his brain to utter; their privilege was aye or no." "Wherefore Mr. Speaker," continues the Lord Keeper Pickering, himself speaker in the parliament of 1588, "her majesty's pleasure is, that if you perceive any idle heads which will not stick to hazard their own estates, which will meddle with reforming the church, and transforming the commonwealth, and do exhibit such bills to such purpose, that you receive them not, until they be viewed and considered by those, who it is fitter should consider of such things, and can better judge of them. That she would not impeach the freedom of their persons; but they must beware, lest, under colour of this privilege, they imagined that any neglect of their duty could be covered or protected: and that she would not refuse them access to her person, provided it were upon urgent and weighty causes, and at times convenient, and when she might have leisure from other important affairs of the realm<sup>3</sup>."

Custom for the  
speaker to read  
and expound all  
bills to the house.

In 1593, a bill for reforming the abuses of ecclesiastical courts having been discussed in the House<sup>4</sup>, the queen expressly commanded, that no bill touching matters of state or reformation of causes ecclesiastical should be exhibited; and if any such should be offered, enjoined the speaker on his allegiance not to read it<sup>5</sup>, it being the custom for the speaker to read and expound all bills to the House. The proposer of this Ecclesiastical Reform Bill was committed, disabled from practising

Committal of  
members by the  
queen.

<sup>2</sup> D'Ewes, 438.

<sup>3</sup> Ibid. 460, 469. Townsend, 37.

<sup>4</sup> D'Ewes, 474. Townsend, 60.

<sup>5</sup> D'Ewes, 62.

as a barrister, and imprisoned for several years; but he wrote a spirited letter to Lord Burleigh, expressing his sorrow for having offended the queen, but at the same time his resolution "to strive while his life should last, for freedom of conscience, public justice, and the liberties of his country<sup>6</sup>."

In the session of 1588-9, Sir Edward Hobbý brought in a bill, to prevent certain exactions made for their own profit by the officers of the Exchequer. Two days after he complained, that he had been very sharply rebuked, by some great personage, not a member of the House, for his speech on that occasion. But instead of testifying indignation at this breach of their privileges, neither he nor the House thought of any further redress, than by exculpating him to this great personage, apparently one of the ministers, and admonishing their members not to repeat elsewhere, anything uttered in their debates<sup>7</sup>.

In 1571, the House resolved upon reading a bill for the reformation of the Common Prayer, and that petition be made to the queen's majesty for her license to proceed in it, before it should be further dealt in. But Strickland, who had proposed it, was sent for to the council, and restrained from appearing again in his place, though put under no confinement<sup>8</sup>.

In the debate which occurred, it was urged that Strickland was not a private man, but represented a multitude, and that it was only at the bar of the House, he ought to answer for any offence committed within its walls,—that matters not treasonable, or which implied not too much derogation of the imperial crown, might, without offence, be introduced into parliament; where every question that concerned the community must be considered, and where even the right of the crown itself must be determined;—that men sat not in that House in their private capacities, but as elected by their country; and though it was proper that the prince should retain his prerogative, yet was that prerogative limited by law. As the sovereign could not of himself make laws, neither could he break them, merely from his own authority<sup>9</sup>.

The commons, upon this occasion, uttered language worthy

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Members reprimanded, for interfering with the officers of the Exchequer.

Prohibition from reading a bill for reformation the Common Prayer.

Discussions of the commons assume an appearance of liberty.

<sup>6</sup> D'Ewes, 478. 3 Lodge's Illust. 34. Neal, c. 8. Heylin's Hist. Presbyterians, 320. 5 Lingard, 522. 5 Hume, 366.

<sup>7</sup> D'Ewes, 433. Vide ante infra, 272.

<sup>8</sup> Ibid. 175. Ibid. 158, Journ. April 7. Ibid. April 9, 10.

<sup>9</sup> D'Ewes, 156, 175, 176. 5 Hume, 175. 5 Lingard, 318.

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of their situation, the result being the release of Strickland<sup>10</sup>: this was, however, but an evanescent spark of constitutional liberty.

Complaint of  
grievances pro-  
hibited.

In the same session, a member having rather prematurely suggested the offer of a subsidy, several complaints were made of irregular and oppressive practices, particularly one patent, which was contrived for the profit of four courtiers, and was attended with the utter ruin of 7000 or 8000 of industrious subjects<sup>11</sup>; and Mr. Bell stated, that licenses granted by the crown and other abuses, galled the people, intimating also that the subsidy should be accompanied by a redress of grievances: this proposition was rendered abortive, by the speaker subsequently informing the House of a message from the queen, "to spend little time in motions, and make no long speeches:"—and Bell was sent for and reprimanded by the council<sup>12</sup>, which had the effect of frightening the other members.

The audacious,  
arrogant, and  
presumptuous  
members reprimanded.

At the close of the session, the lord keeper severely reprimanded those audacious, arrogant, and presumptuous members who had presumed to call in question her majesty's grants and prerogatives. "But her majesty warns them, that since they thus wilfully forget themselves, they are otherwise to be admonished. Some other species of correction must be found for them; since neither the commands of her majesty, nor the example of their wiser brethren, can reclaim their audacious, arrogant, and presumptuous folly, by which they are thus led to meddle, with what nowise belongs to them, and what lies beyond the compass of their understanding<sup>13</sup>."

Wentworth com-  
mitted, for up-  
holding the pri-  
vileges of the  
commons.

In 1575-6, Peter Wentworth having addressed the House, as to the encroachments of the Crown upon the privileges of the commons, they became alarmed, and judged it expedient to prevent an unpleasant interference by sequestering their member, and of appointing a committee of all the privy councillors, in their capacities of members of the House, to examine him: and upon their report Wentworth was committed to the Tower. He had lain there a month, when the queen sent word that she remitted her displeasure towards him, and required his enlargement of the House, who released him upon a reprimand from the speaker, and an acknowledgment of his fault upon

<sup>10</sup> D'Ewes, 175.

<sup>11</sup> Ibid. 242.

<sup>12</sup> Ibid. 159.

<sup>13</sup> Ibid. 151. 5 Hume, 180, 181.

his knees, and by this lenity, indirectly assumed the power of imprisoning the members<sup>14</sup>.

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In 1587-8, a bill and a book was offered to the House, the former annulling all laws respecting ecclesiastical government then in force, and establishing a certain new form of Common Prayer contained in the latter.

Commons prevented from discussing ecclesiastical government.

The speaker interposed to prevent this bill being read, on the ground that her majesty had commanded them not to meddle in this matter. A debate ensued, and upon its adjournment, the queen sent for the speaker, who delivered up to her the bill and book.

Next time that the house sat, Mr. Wentworth insisted that some questions of his proposing should be read. These queries were to the following purport:—Whether this council was not a place for any member of the same, freely and without control, by bill or speech, to utter any of the griefs of this commonwealth? Whether there be any council that can make, add, or diminish from the laws of the realm, but only this council of parliament? Whether it be not against the orders of this council to make any secret or matter of weight, which is here in hand, known to the prince, or any other, without consent of the House? Whether the speaker may overrule the House in any matter, or cause in question? Whether the prince and state can continue and stand, and be maintained without this council of parliament, not altering the government of the state?

Questions of Wentworth as to the privileges of the House.

These questions the speaker declined reading; but Wentworth, the proposer, and those who had spoken in favour of his motion, were committed to the Tower; and, notwithstanding some notice taken of it in the House, it does not appear they were set at liberty before its dissolution<sup>15</sup>.

Commitment of Wentworth.

In 1593, Peter Wentworth, with another member, presented a petition to the lord keeper, desiring the lords of the Upper House to join with them of the Lower, in imploring her majesty to entail the succession of the crown; and for which they had prepared a bill,—but for this interference they were summoned before the council, and committed to prison<sup>16</sup>.

Petition requesting the queen to entail the succession of the crown.

These commitments were so numerous, that a question was raised, whether some places might not complain of paying subsidies, their representatives not having been consulted nor

Numerous commitments of members.

<sup>14</sup> D'Ewes, 236, 237, 244, 260.

<sup>15</sup> Ibid. 410.

<sup>16</sup> Ibid. 476.



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present when granted, and that the House should address the queen to set them at liberty.

It was opposed by the ministers, as likely to hurt those whose good was sought, her majesty being more likely to release them if left to her own gracious disposition<sup>17</sup>. The queen did not release them during the session, and kept them in confinement after it was terminated<sup>18</sup>.

Notwithstanding these restraints, the commons were enabled during this reign to acquire the recognition of important "privileges of parliament."

Until 1575, the precedent established in the case of Ferrers<sup>19</sup> was not followed, a writ of privilege being procured to release their members when under arrest; but "Smalley," a member's servant, having been arrested, the commons sent their serjeant to enforce his release,—and from the Journal it strangely appears, that this order was given after rescinding a previous resolution, which stated no precedents could be discovered for setting at liberty any one in arrest, except by writ of privilege<sup>20</sup>.

In cases of assaults upon members, several unobjected commitments to the Tower, and to the custody of the serjeant, occur during the reigns of Mary and Elizabeth<sup>21</sup>.

It also became an acknowledged right that "no subpoena or summons for the attendance of a member in any other court ought to be served, without leave obtained, or information given, to the House; and that the persons who procured or served such processes were guilty of a breach of privilege, and were punishable by commitment or otherwise, by the order of the House<sup>22</sup>."

The cases of Storie<sup>23</sup> during the reign of Edward VI., Copley<sup>24</sup> in the reign of Mary, and Hall<sup>25</sup> and Dr. Parry<sup>26</sup> in this reign, furnish precedents of the powers which the House possess to punish their own members by imprisonment, fine, reprimand, and expulsion.

And in 1586, contumacious expressions having been used against the House, the offender was summoned to the bar, and, on making his submission, was only fined<sup>27</sup>.

IMPORTANT PRIVILEGES ACQUIRED BY THE COMMONS.

Cases of Ferrers and Smalley.

Commitments for assaults on members.

No subpoena for the attendance of a member in any court permitted.

Members punished by imprisonment, fine, reprimand, and expulsion.

Contumacious expressions.

<sup>17</sup> D'Ewes, 470. <sup>18</sup> Birch's Mem. Eliz. I. 96. <sup>19</sup> Vide ante infra, 168.

<sup>20</sup> Com. Journ. Feb. 22, 27, A.D. 1575.

<sup>21</sup> Hatsel, 73, 92, 119.

<sup>22</sup> Ibid. 96, 97, 119.

<sup>23</sup> Com. Journ. Jan. 21, 22, 23, A.D. 1547—8.

<sup>24</sup> Com. Journ. March 5, 7, A.D. 1557—8.

<sup>25</sup> D'Ewes, 207, 212, 291. Hatsel, 93.

<sup>26</sup> D'Ewes, 341. 5 Ilume, 266.

<sup>27</sup> D'Ewes, 366.

Controverted elections were originally decided in chancery, from which the writ issued, and into which the return was made, and under Stat. 6 Henry VI. c. 4, the invalidity of the election was to be decided by a jury of the county; but in this reign, the "commons," first claimed and exercised an exclusive right to determine such questions, and which has never been subsequently relinquished<sup>28</sup>.

In 1586, the chancellor, in consequence of some irregularity in the first return, issued a second writ for the election of representatives for the county of Norfolk, and a different person was elected, upon which the House appointed a committee to inquire into the circumstances.

The only previous instance in which such a jurisdiction had been assumed, was in the reign of Mary<sup>29</sup>, when a committee was appointed "to inquire if Alexander Nowell, being prebendary in Westminster, and thereby having a voice in the Convocation House, could be a member of this House," and the commons decided that Nowell was disqualified, and that the queen's writ should be directed for another burgess.

The speaker then received orders from Elizabeth to acquaint the House with her displeasure, that it "had been troubled with a thing impertinent for them to deal with, and only belonging to the charge and office of the lord chancellor, whom she had appointed to confer with the judges about the returns for the county of Norfolk, and to act therein according to justice and right."

Notwithstanding this inhibition, a committee was nominated, who reported that those elected under the first writ should take their seats, declaring further that they understood the chancellor and some of the judges to be of the same opinion: but that "they had not thought it proper to inquire of the chancellor what he had done, because they thought it prejudicial to the privilege of the House to have the same determined by others, than such, as were members thereof. And though they thought very reverently of the lord chancellor and judges, and knew them to be competent judges in their places, yet in this case they took them not for judges in parliament in this House; and thereupon required that the members, if it were so thought good, might take their oaths and be allowed of by the force of the first writ, as allowed by

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Controverted elections originally decided in chancery, or by a jury.

The commons maintain their privilege to judge of the validity of parliamentary returns.

Member of the Convocation House, disqualified from being a member of the commons.

The House supersede the decision of the chancellor.

<sup>28</sup> D'Ewes, 393.

<sup>29</sup> Com. Journ. 1 Mary, 27.

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the censure of this House, and not as allowed by the lord chancellor and judges, which was agreed unto by the whole House<sup>30</sup>."

Right of the  
commons to ori-  
ginate money  
bills,

In 1593, the commons sustained their privilege of originating money bills. The lords having reminded them of the queen's want of a supply, requested a conference; this having been granted, Sir Robert Cecil reported that the lords would consent to nothing less than a grant of three entire subsidies, —the commons having shown a reluctance to grant more than two.

Mr. Francis Bacon said, "he yielded to the subsidy, but disliked that this House should join with the Upper House in granting it. For the custom and privilege of this House hath always been, first to make an offer of the subsidies from hence, then to the Upper House; except it were that they present a bill unto this House with desire of our assent thereto; and then to send it up again." And the proposition for another conference with the lords was lost against the crown influence, by two hundred and seventeen to one hundred and twenty-eight<sup>31</sup>.

Elizabeth's no-  
tions of the duty  
and authority of  
parliament.

Mr. Hume thus sums up the opinion which Elizabeth had entertained of the duty and authority of parliaments<sup>32</sup>. They were not to canvass any matter of state: still less were they to meddle with the church. Questions of either kind were far above their reach, and were appropriated to the prince alone, or to those councils and ministers with whom he was pleased to entrust them. What then was the office of parliament? They might give directions for the due tanning of leather, or milling of cloth; for the preservation of pheasants and partridges; for the reparation of bridges and highways; for the punishment of vagabonds, or common beggars. Regulations concerning the police of the country came properly under their inspection; and the laws of this kind which they prescribed, had, if not a greater, yet a more durable authority than those which were derived solely from the proclamations of the sovereign. Precedents or reports could fix a rule for decisions in private property, or the punishment of crimes; but no alteration or innovation in the municipal law, could proceed from any other source than the parliament, nor would the courts of justice be induced to change their established practice by an order of council.

<sup>30</sup> D'Ewes, 340, 393. 1 Hallam's Const. Hist. 376.

<sup>31</sup> Ibid. 486.

<sup>32</sup> 5 Hume, 181, 182.

But the most acceptable part of parliamentary proceedings was the granting of subsidies; the attainting and punishing of the obnoxious nobility, or any minister of state after his fall; the countenancing of such great efforts of power, as might be deemed somewhat exceptionable, when they proceeded entirely from the sovereign.

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The redress of grievances was sometimes promised to the people; but seldom could have place, while it was an established rule, that the prerogative of the crown must not be abridged, or so much as questioned or examined in parliament. Even though monopolies and exclusive companies had already reached an enormous height, and were every day increasing, to the destruction of all liberty, and extinction of all industry; it was criminal in a member to propose, in the most dutiful and regular manner, a parliamentary application against any of them.

Prerogative of the crown, not to be abridged or examined in parliament.

### 10. *The Reformation.*

When the depravity of human nature is considered, the insidious advances that the Church of Rome was enabled to make during the preceding reign, cannot excite much surprise, more particularly as infidelity and an infallible church interchangeably act upon each other.

The man who has long wandered over the dark and dismal seas of infidelity and doubt, will often, towards the end of his course, take refuge in the bosom of an infallible church, as a haven from the waves on which he has so long been tossed. And, on the other hand, he who has ministered in the adyta of a superstitious temple, and who has seen the machinery which moves the puppets before which the vulgar bow<sup>1</sup>,—in his contempt for the ignorance on which he basely practises, and from his knowledge of the falsehood of the creed he propagates, ends in disbelieving the existence of true religion altogether.

An infallible church is a haven from the seas of infidelity and doubt.

The legislature, by Stat. 1 Elizabeth, c. 1, re-invested the crown with jurisdiction in ecclesiastical and spiritual affairs, and by it the statutes passed in the reign of Henry VIII., for the abolishing of the pope's power, were again revived; and those in Mary's reign to the contrary, were repealed, and also the act for proceeding against heretics.

The crown re-invested with jurisdiction in ecclesiastical and spiritual affairs. Stat. 1 Elizabeth, c. 1.

<sup>1</sup> Vide ante infra, 171—178.

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The laws of King Edward against those that spoke irreverently of the sacrament, and against private masses, and for communion in both kinds, were revived; and it was declared that the authority of visiting, reforming, and correcting all things in the church, should be for ever annexed to the crown, which the queen and her successors might by her letters patent depute to any persons to exercise in her name.

Supremacy of  
the queen.

All bishops and other ecclesiastical persons, and all in any civil employment, were required to swear that they acknowledged the queen to be the *supreme governor in all causes, as well ecclesiastical as temporal, within her dominions; that they denounced all foreign power and jurisdiction, and should bear the queen faith and true allegiance*: whosoever refused to swear it, was to forfeit any office he had either in church or state, and disabled to hold any employment during life. And if any should, either by discourse or in writing, set forth the authority of any foreign power, or do anything for the advancement of it, they were to forfeit all their goods and chattels: and if they had not goods to the value of twenty pounds, they were to be imprisoned for a year; for the second offence, were to incur the pains of a *præmunire*; and the third offence, was made treason.

Restrictions as  
to the definition  
of heresies.

The queen was empowered to commission such persons as should be requisite to reform and order ecclesiastical matters, but who should judge nothing to be heresy but what had been already so judged by the AUTHORITY of the CANONICAL SCRIPTURES, or by the FIRST FOUR GENERAL COUNCILS, or by any other general council, in which such doctrines were declared to be heresies by the *express and plain words of Scripture*: all other points, not so decided, were to be judged by the parliament, with the assent of the clergy in their convocation<sup>2</sup>.

None except ec-  
clesiastical or  
civil officers  
bound to take  
the oath of su-  
premacy.

Great lenity was displayed in the formation of this statute, for its penal provisions were very limited, as none except those who hold ecclesiastical or civil offices<sup>3</sup> could be required to take the oath; and none but those who voluntarily denied the queen's supremacy, were subjected to the other penalties.

Act for unifor-  
mity of Common

The next legislative measure<sup>3</sup>, was an act for the "Uni-

<sup>2</sup> Vide etiam *Canons of Ælfrie*, A. D. 970, Wilk. Con. I. 254; *Council of Hatfield*, A. D. 680, Wilk. Con. I. 52; *Council of Calchuythe*, A. D. 785, Wilk. Con. I. 146.

<sup>3</sup> Stat. 1 Elizabeth, c. 2.

formity of Common Prayer, and Service in the Church," and "Administration of the Sacraments."

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Prayer and  
Church Service.

The government  
endeavour to  
unite the nation  
in one faith.

Some of the reformed divines had been appointed to review King Edward's Liturgy, and to see if in any particular it should be changed\*. They proposed that the Communion Book should be so contrived, that it might not exclude the belief of the corporal presence; for the chief design of the queen's council was to unite the nation in one faith; and the greatest part of the nation continued to believe such a presence. It was therefore recommended that, there should be no express definition made against it, that so it might lie as a speculative opinion, not determined, in which every man was left to the freedom of his own mind.

Upon which grounds, the rubric that explained the reason for kneeling at the sacrament, "that thereby no adoration is intended to any corporal presence of Christ's natural flesh and blood, because that is only in heaven," which had been in King Edward's Liturgy, was now omitted.

"No adoration  
intended to any  
corporal presence  
of Christ's natu-  
ral flesh and  
blood," omitted.

At the delivery of the elements in King Edward's first Liturgy, there was to be said, "The body or blood of our Lord Jesus Christ preserve thy body and soul to everlasting life;" which words had been left out in his second Liturgy, as favouring the corporal presence too much; and instead of them, these words were ordered to be used in the distribution of that sacrament, "Take and eat this, in remembrance that Christ died for thee, and feed on him in thy heart by faith with thanksgiving; and drink this in remembrance that Christ's blood was shed for thee, and be thankful." They now joined both these in one, and made some slight alterations in the collects; and thus was the book presented to the House.

The Book of Ordination was not in express terms named in the Act of Uniformity, which gave an occasion afterwards to question the lawfulness of the ordinations made by that book. But the book that was set out by Edward VI., and confirmed by parliament in the fifth year of his reign, was now authorized by law, and the repeal of it in Queen Mary's time was made void. So the Book of Ordination being in that act added to the Book of Common Prayer, was now

Book of Ordina-  
tion.

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Reformed clergy  
commanded to  
use the Common  
Prayer.

legally in force again; which was afterwards declared in parliament, upon a question that was raised about it by Bonner.

The reformed clergy were commanded to use this "Book of Common Prayer," and none other, in the celebration of divine service; and every minister refusing to use it, or using any other, or speaking in derogation of the Common Prayer was liable, if not beneficed, for the first offence, to be imprisoned one year; for the second, imprisoned for life: and if beneficed, was liable, for the first offence, to be imprisoned during six months, and forfeit a year's value of his benefice for the second, deprived of his benefice, and suffer one year's imprisonment; and for the third, in addition to deprivation be imprisoned for life.

Speaking in de-  
rogation of the  
Book of Common  
Prayer.

The Act of Uniformity further provided, that if any person should speak in derogation of the Book of Common Prayer or prevent the reading of it, or cause any other service to be read, he should forfeit, for the first offence, one hundred marks for the second, four hundred; and for the third, all his good and chattels, and be imprisoned for life.

Statute framed  
with great lenity.

Penalties against  
those who main-  
tained the autho-  
rity of the Ro-  
man See.

These enactments were, like the former, framed with great lenity, as they affected only the Protestant clergy, and person in general who should speak against the Common Prayer Book. But lenity to a Roman Catholic of those days was the worst policy that could have been pursued by the Anglican church: for notwithstanding the conciliatory spirit of these statutes, the treasonable designs of the dissenters were such, as to require the enactment of Stat. 5 Elizabeth, c. 1, by which person maintaining the authority of the pope, or the Roman See, were subjected to the penalties of *præmunire*; ecclesiastical persons fellows of colleges in the universities, and officers in the court of justice, &c., were compellable to take the oath of supremacy, under the penalty of *præmunire* for the first offence and those of high treason for the second: and persons who had said or heard mass might have the oath tendered to them, and their refusal of it was punishable by the same penalties.

Stat. 5 Elizabeth,  
c. 1.

Stat. 16 Richard  
II. c. 1.

THE INJUNC-  
TIONS.

Marriage of the  
clergy.

The Injunctions given by Edward VI. upon his accession to the crown, were, in 1559, all renewed with very little variation, but a few additions were made: thus it was declared, that neither in the Scriptures, nor by the primitive church, was there any prohibition that priests might not have wives; upon which many in King Edward's time had married:

but great offence was given by the indecent marriages that some of them then made. To prevent the like scandals for the future, it was ordered, that no priest or deacon should marry without allowance from the bishop of the diocese, and two justices of the peace, and the consent of the woman's parents or friends.

All the clergy were to use habits according to their degrees in the universities; the queen declaring, that this was not done for any holiness in them, but for order and decency. No man was to use any charm, or consult with such as did. All were to resort to their own parish churches, except for an extraordinary occasion. Inn-keepers were to sell nothing in the times of divine service. None were to keep images or other monuments of superstition in their houses. None might preach, but such as were licensed by their ordinary. In all places they were to examine the causes why any had been in the late reign, imprisoned, famished, or put to death, upon the pretence of religion: and for which all registers were to be searched.

In every parish the ordinary was to name three or four discreet men, who were to see that all the parishioners did duly resort on Sundays and holydays to church; and those who did it not, and, upon admonition, did not amend, were to be denounced to the ordinary. On Wednesdays and Fridays the Common Prayer and Litany were to be used in all churches. All slanderous words, as papist, heretic, schismatic, or sacramentary, were to be forborne under severe pains. No books were to be printed without a licence from the queen, the archbishop, the Bishop of London, the chancellor of the universities, or the bishop or archdeacon of the place where it was printed. All were to kneel at the prayers, and to show a reverence when the name of Jesus was pronounced.

Then followed an explanation of the oath of supremacy, in which the queen declared, that she did not pretend to any authority for the ministering of divine service in the church, and that all that she challenged was, that, which had at all times belonged to the imperial crown of England; that she had the sovereignty and rule over all manner of persons under God, so that no foreign power had any rule over them; and if those who had formerly appeared to have scruples about it, took it in that sense, she was well pleased to accept of it, and did acquit them of all penalties in the act.

The next was about altars and communion tables: she

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The clergy to use habits according to their degrees in the universities.

Parishioners to attend church service.

Kneeling at prayers.

Explanation of the oath of supremacy.

Altars and communion tables.



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ordered that, for preventing of riots, no altar should be taken down, but by the consent of the curate and churchwardens; that a communion-table should be made for every church, and that, on sacrament-days, it should be set in some convenient place in the chancel, and at other times should be placed where the altar had stood. The sacramental bread was ordered to be round and plain, without any figure on it, but somewhat broader and thicker than the cakes formerly prepared for the mass.

Thanksgivings  
for blessings to  
the church in  
the saints de-  
parted this life.

The form of bidding prayer was prescribed, with some variation from that in King Edward's time. To the thanksgiving for God's blessings to the church in the saints departed this life, a prayer was added, "that they with us, and we with them, may have a glorious resurrection;" now, those words, "they with us," as seeming to import a prayer for the dead, were left out.\*

COURT OF HIGH  
COMMISSION.

The primitive reformers, in any country of Europe, though they zealously opposed the papal tyranny, were far from adopting the principle of religious toleration; because such a principle would have been unsuitable to their circumstances, which required they should combat the most inveterate prejudices, and overturn an artful system, which had improperly acquired respect and authority.

Ecclesiastical  
authority, dele-  
gated by Henry  
VIII. to a vice-  
gerent.

In England, the king succeeded to the supremacy which had been vested in the Roman pontiff; he became the judge of orthodoxy in matters of religion, and assumed the power of directing the modes and forms of religious worship. This authority was by Henry VIII. delegated to a single person, with the title of "Lord Vicegerent."

But under Eliza-  
beth it was exe-  
cuted by a body  
of men.

In this reign, parliament entrusted such jurisdiction to a body of men, and empowered the queen to appoint a commission for the exercise of such authority.

Court of High  
Commission cal-  
culated to in-  
dulge religious  
rancour and ani-  
mosity, and ac-  
custom the peo-  
ple to political  
subjection.

This alteration was an improvement; but from being so little fettered by the rules of positive law, this court was calculated to indulge religious rancour and animosity, and likewise to accustom the people to yield to political subjection;—thus, in 1583, a commission was issued, consisting of forty-four commissioners, being either bishops, privy councillors, clergymen, or civilians, and after reciting the Acts of Supremacy, Uniformity, and two others, directs them to inquire, as well by oaths of twelve good and lawful men, as by witnesses, and all other

means they can devise, of all offences, contempts, or misdemeanours done and committed, contrary to the tenour of the said several acts and statutes; and also to inquire of all heretical opinions, seditious books, contempts, conspiracies, false rumours or talks, slanderous words, and sayings, &c. contrary to the aforesaid laws.

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Power is given to any three commissioners, of whom one must be a bishop, to punish all persons absent from church, according to the Act of Uniformity; or to visit and reform heresies and schisms according to law; to deprive all beneficed persons holding any doctrine contrary to the Thirty-nine Articles; to punish incests, adulteries, and all offences of the kind; to examine all suspected persons on their oaths, and to punish all who should refuse to appear or to obey their orders, by spiritual censure, or by discretionary fine or imprisonment; to alter and amend the statutes of colleges, cathedrals, schools, and other foundations, and to tender the oath of supremacy according to the act of parliament<sup>6</sup>.

Powers of the  
commissioners.

There is no middle course, in dealing with religious sectaries, between the persecution that exterminates, and the toleration that satisfies, and, consequently, the fines or imprisonment, deprivations and suspensions of the clergy were numerous, and comprehended, at one time, the third of all the ecclesiastics of England<sup>7</sup>.

Deprivations of  
the clergy.

This policy seems never to have accorded with that of Burleigh, who, in writing to Grindal, in 1575, says, "that though he liked not the unruly reproachers of the clergy at this time, yet he feared the abuse of ecclesiastical jurisdiction, both by bishops and archdeacons, gave too great an occasion to those stoical and irregular rovers to multiply their invectives against the state of our clergy<sup>8</sup>." And, in another letter to Whitgift, when again speaking of filling up preferments, that, "he saw such worldliness in many, that were otherwise affected before they came to the cathedral churches, that he feared the places altered the men<sup>9</sup>:"—"neither was a regenerated class to be anticipated from the popery of Oxford or the puritanism of Cambridge<sup>10</sup>."

Religious perse-  
cution, discounte-  
nanced by  
Burleigh.

Its methods of inquisition, and of administering oaths, are described as having been very unjust:—thus Lord Burleigh,

<sup>6</sup> 1 Hallam's Const. Hist. 271.    <sup>5</sup> Hume, 263.

<sup>7</sup> 1 Neal, 479.    <sup>5</sup> Hume, 454.

<sup>8</sup> Strype's Whitgift, I. 338.

<sup>9</sup> Strype's Grindal, 281.

<sup>10</sup> Ibid. 610.    Strype's Grindal, 196.

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Elizabeth commands that no person be permitted to deviate from the letter of the law.

in alluding to the articles of examination, wrote to Whitgift, "so curiously penned, so full of branches and circumstances, as he thought the inquisition of Spain used not so many questions to comprehend and trap their preys."<sup>11</sup>

But the queen, in a letter to the archbishop, said, "she was resolved that no man should be suffered to decline, either on the left or on the right hand, from the direct line limited by authority of her laws and injunctions; and charged him by all means lawful to proceed therein."<sup>12</sup>

With respect to the ecclesiastical jurisdiction, the clergy only executed the laws, which parliament could have repealed; and as to the filling up of preferments, the clergy were more competent to form an opinion than a more political chief, such as Burleigh. It is, however, to be regretted, that the clergy did not practise religious toleration to a greater extent, and pursue a course different from that which they adopted, in some few matters which were of real insignificance, but which were magnified into crimes by the papists and puritans, who during their political existence have always been regardless of pure constitutional reform, but ever carping at mere matters of detail; in fact, like insects, avoiding the sound parts of animal matter, but invariably settling upon sores or scars.

The THIRTY-NINE  
ARTICLES presented to the  
convocation by  
Archbishop  
Parker.

In 1562, parliament and the convocation of the province of Canterbury were convened, when a draft of the Thirty-nine Articles was presented to the convocation by Archbishop Parker. He omitted four articles of those of Edward VI., which formed the X., XVI., XIX., and XLI., of the forty-two. He introduced four new ones, V., XII., XXIX., XXX., and altered, more or less, seventeen of the others, II., VI., VII., IX., X., XI., XVII., XXII., XXIV., XXV., XXVII., XXVIII., XXXII., XXXIV., XXXV., XXXVI., XXXVII.

Alterations made  
in the draft prepared by Parker.

The convocation which met January 11, 1563, made several alterations in the copy prepared by Parker. They omitted XL., XLI., and XLII.; and when they were printed, the XXIX. also, was left out: they altered III., IX., XXI., XXV., XXVIII., XXXIV., and the title of XVI. The Articles so changed were subscribed by the Upper House of

<sup>11</sup> Fuller, 198. Neal, c. 8. Strype's Whitgift, 336, 362, 366. App. 142.

<sup>12</sup> Strype, 307. 5 Hume, 454. 5 Lingard, 519.

<sup>13</sup> Murden, 183. 5 Hume, 454.

Convocation on the 29th of January, and by the Lower House on the 5th of February.

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In 1566, a bill was brought into parliament to confirm them; it passed the Commons, but was dropped in the House of Lords, by the queen's command.

In 1571, the convocation revised the Articles of 1562, and made some alterations in them; and by Stat. 13 Elizabeth, c. 12, it was enacted, that "all ecclesiastical persons should subscribe to all the Articles of Religion, which only concern the confession of the true Christian faith and the doctrine of the sacraments, comprised in a book imprinted, intituled, 'Articles,' whereupon it was agreed by the Archbishops and Bishops, and the whole Clergy in Convocation, holden at London in 1562, according to the computation of the Church of England, for the avoiding the diversities of opinions, and for the establishing of consent touching true religion, put forth by the Queen's authority." It seems that under this statute, Articles XIX., XX., XXXV., XXXVI., are not included; but all acts of parliament made subsequent to this period, which mention the Articles, refer to this act, as settling the Articles, and the rule of subscription to them.

Stat. 13 Elizabeth, c. 12.

Articles XIX., XX., XXXV., XXXVI., do not seem to be included in the statute.

In the convocation which was sitting at the same time, Parker commenced a review of the Articles, for the purpose of sanctioning, by the authority of convocation, the Articles which should be required from the clergy. When some trifling alterations had been made, and Article XXIX. restored, these Articles, then consisting of the present XXXIX., were subscribed by the Upper House on May 11, and afterwards published under the superintendence of Bishop Jewel, and the ratification with which they now conclude was added<sup>13</sup>. Disputes arose as to the authorised copy of the Articles, but which were virtually settled by the canons passed in the convocation of 1604.

Subscription by the Upper House to the XXXIX. Articles, and their publication by Bishop Jewel.

Canons of 1604.

Dr. Burnet briefly sums up the essential alterations, which were thus effected, in the Forty-two Articles under Edward VI., as follows.

Essential difference between the Forty-two Articles under Edward VI. and the Thirty-nine by Elizabeth.

In the third article<sup>14</sup>, the explanation of Christ's descent to hell was left out.

Alteration of the Articles of Edward VI.

<sup>13</sup> 1 Short's Church Hist. 488, 489. 1 Butler's Hist. Rom. Cath. 288, 289. Strype's Cranmer, 422. Lamb, 13, 24, 25.

<sup>14</sup> These articles are to be found in 2 Burnet's Hist. Ref. part ii. 291, n. 55; et etiam Sparrow's Collection of Canons, 91—106.

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The Scriptures.

In that about the Scriptures, they now added an enumeration of the canonical and apocryphal books; declaring, that some lessons were read out of the latter, for the instruction of the people, but not for confirmation of the doctrine.

About the authority of the church, they now added that the church had power to decree rites and ceremonies, and had authority in controversies of faith, but still subordinate to the Scripture.

The Lord's  
Supper.

In the article about the Lord's supper, instead of the refutation of the corporal presence, from the impossibility of a body's being in more places at once; from whence it follows, that since Christ's body is in heaven, the faithful ought not to believe or profess a real or corporal presence of it in the sacrament,—in the new articles it is said, "That the body of Christ is given and received after a spiritual manner; and the means by which it is received is faith<sup>15</sup>."

BULL OF POPE  
PIUS V. releasing  
all subjects from  
their allegiance  
to Elizabeth.

In 1570, the infallible Pius V. issued the following bull, in which after reciting the offences of the queen, the pope, "out of the fulness of his apostolic power, declares Elizabeth, being a heretic, and a favourer of heretics, and her adherents in the matter aforesaid, to have incurred the sentence of anathema, and to be cut off from the unity of the body of Christ. Moreover we declare her to be deprived of her pretended title to the kingdom aforesaid, and of all dominion, dignity and privilege whatsoever; and also the nobility, subjects, and people of the said kingdoms, and all others, which have in any sort sworn unto her, to be for ever absolved, from every such oath, and all manner of duty, dominion, allegiance, and obedience, as we also do, by the authority of these presents, absolve them, and do deprive the same Elizabeth of her pretended right to the kingdom, and all other things aforesaid; and we do command and interdict, all and every the noblemen, subjects, people, and others aforesaid, that they presume not to obey her, or her monitions, mandates, and laws; and those, which shall do to the contrary, we do innodate with the like sentence of anathema.

"And, because it were a matter of too much difficulty to carry these presents to all places, where it may be needful, our will is, that the copies thereof, under a public notary's hand, and sealed with the seal of an ecclesiastical prelate, or of his

<sup>15</sup> 2 Burnet, 726; sed vide Ibid. 727, 728; et MSS. C. Cor. Christ. Cant.

court, shall carry altogether the same credit with all people, judicial and extrajudicial, as these presents should do, if they were exhibited or shown. Given at Rome, at St. Peter's, in the year of the incarnation of our Lord, 1570, the 5th of the calends of May, and of our popedom the 5th year."

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This bull, as well as that which was issued by Paul III. against Henry VIII., illustrates that the principles of the Church of Rome were, at this period, inconsistent with those of the English constitution; in fact, many criminals who were punished in this reign for treason, were the mere instruments of the Roman Catholic clergy, who considered that offence justifiable, as against the supremacy of the Anglican church, and it was for *treason*, and not for their adherence to Rome, that many of themselves were justly executed.

This bull illustrates of the principles of the Church of Rome.

This bull was also recognised by Gregory III. and by Sixtus V., who issued another bull equally vicious. Pius V. was beatified by Clement X., in 1672, and canonized by Clement XI., in 1712; it therefore seems that up to 1712, the "infallible and never-changing Church of Rome" recognised the principle of the IV. Lateran Council<sup>16</sup>, and also the acts of deposition by Paul III., Pius V., Gregory III., and Sixtus V. Notwithstanding these facts, in 1788, and 1789, six Roman Catholic universities, Louvain, Douay, Paris, Alcalá, Valladolid, and Salamanca<sup>17</sup>, in answer to questions circulated under the directions of Mr. Pitt, denied the recognised existence of any power being in the pope to depose a temporal prince.

Statements of the universities in 1788 and 1789 as to the "non-deposing" power of the pope, canvassed.

The only deductions that can be made from such premises are, either that the Church of Rome is "fallible and ever-changing," or that the universities have been guilty of the basest prevarication of truth; and the canons of the Roman Catholic church would have justified, nay, have rigorously required, such a line of dishonourable and treacherous conduct on their part, because it had a tendency to serve the spiritual and temporal interests of that church; "for faith is only to be kept with a heretic, when it is inexpedient to act otherwise."

The following extracts from III. Lateran Council, A. D. 1179, and from Dens' Theology, justifying perjury and fraud for the benefit or convenience of the Roman church, will either serve as an answer to, or essentially affect the credit of the decrees of the Gallican church, in 1682, and other similar

Perjury and fraud justified by the Roman Catholic church.

<sup>16</sup> Vide ante, 236—241.

<sup>17</sup> 1 Butler's Hist. Rom. Cath. 439—482.

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Decree of III.  
Lateran Council,  
A. D. 1179.

Extracts from  
Dens' Theology  
as to "official  
lies" and "extir-  
pation" of dis-  
sent.

Declaring the  
queen a heretic  
made treason.  
Stat. 13 Eliza-  
beth, c. 1.

farces, denying the authority of the pope, in the height of his power, to depose heretical princes.

" . . . Nor let our decree be impeded, if perchance some one shall say that he is bound by an oath to preserve the customs of his church. For those are not to be called oaths, but rather perjuries, which are contrary to the good of the church, and the appointment of the holy fathers<sup>18</sup>."

"What if any one should be asked whether he be a priest, a monk, or a bishop,—is he bound to confess?"

"The general answer in opposition to Pauwels' is,—No; because such titles are certain accidents of religion, and therefore, by concealing them a man is not thought to conceal anything essential to the faith, wherefore he who should deny himself to be a priest (for example) when he really is one, only tells a *mere official lie*<sup>19</sup>."

" . . . Granting the argument of Gamaliel to be valid, there is this difference; that the cause of unbelievers is not doubtful to the judges of the church, as that of the apostles was to the Jews, but it is clear that it is certainly false and condemned, whence it is not to be tried or approved, but *extirpated*, unless there may be some prudential reasons which may induce us to tolerate it<sup>20</sup>."

In consequence of the malicious bull, by Pius V., and from its directions being ably supported by numerous "black-stoled ministers of crime," the legislature, by Stat. 13 Elizabeth, c. 1, enacted that persons who affirmed that Elizabeth was not a lawful sovereign,—or that any other had a preferable title,—or that she was a heretic, schismatic, or infidel,—or that the

<sup>18</sup> . . . Nec nostram constitutionem impediatur, si forte aliquis ad conservandam Ecclesiæ suæ consuetudinem juramento se dicat adstrictum. Non enim dicenda sunt juramenta, sed potius perjuria, quæ contra utilitatem Ecclesiasticam, et sanctorum patrum veniunt instituta, (Conc. X. 1517.)

<sup>19</sup> Quid, si quis interrogetur: an sit sacerdos, religiosus, episcopus, etc. an tenetur confiteri? (2 Theolog. Mor. et Dog. Petri Dens, 65. Ex typ. R. Coyne, Dublin, 1832.)

Responsio communis contra Pauwels est negativa, quia tales tituli sunt quædam accidentia religionis; adeoque illa tacendo non censetur aliquid essenziale fidei tacere. Propterea, qui se negarit v. g. sacerdotem, cum talis sit, tantum mendacium officiosum committerit. Ibid.

<sup>20</sup> Dato, quod Gamaliel's argumentatio subsistat, disparitas est, quod causa infidelium non sit judicibus ecclesiæ dubia, prout causa apostolorum erat Judæis: sed constat, illam certo falsam esse et damnatam: unde tentanda non est vel probanda, sed extirpanda, nisi adsint rationes, quæ illam tolerandam esse suadeant, (Ibid. 83.)

right to the crown and the succession could not be determined by law, were guilty of treason.

And by Stat. 13 Elizabeth, c. 2, persons procuring, or bringing in bulls or briefs from the pope, and absolving others by virtue of them, or receiving such absolutions, were declared guilty of treason: and their aiders and abettors were made guilty of the penalties of *præmunire*; persons concealing bulls, &c., for above six weeks were punishable for misprision of treason; and priests bringing "Agnus Dei," and similar articles, blessed by the pope, or by his authority, to which pardons or immunities were annexed, were subjected to the penalties of *præmunire*.

In the construction of this act, it appears to have been understood that the absolutions which it mentions, did not denote absolutions, given in sacramental confession, but those absolutions only which were granted by special faculties.

Gregory XIII., having succeeded Pius V., granted that the bull of the latter, forbidding the subjects of Elizabeth to obey her, or her laws, under pain of excommunication, should be understood in this sense, "That it should always oblige the queen and heretics; and should by no means bind Catholics, as matters then stood; but thereafter bind them, when some public execution of the bull might be had or made<sup>31</sup>;" thus recognising the principle of the bull of Pius V., and suspending the action of it only till circumstances made an execution of it feasible.

It cannot, therefore, be a subject of surprise, that the Roman Catholics had been and were incessantly engaged in every species of treason, so much so, as to justify, in every respect, Stat. 23 Elizabeth, c. 1, which commences with a recital, "That divers evil-affected persons had practised contrary to the meaning of Stat. 13 Elizabeth, c. 2, by other means than by bulls or instruments, written or printed, to withdraw divers from their obedience to her majesty, and to obey the usurped authority of Rome: for reformation of which, and to declare the true meaning of that statute, it was enacted,—that all persons who had, or should pretend to have, power to absolve or withdraw any of her majesty's subjects from their natural obedience to her majesty; or to withdraw

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Bringing bulls,  
&c., from Rome,  
declared to be  
treason.

Stat. 13 Eliza-  
beth, c. 2.

Stat. 16 Richard  
II. c. 5.

Gregory XIII.  
recognises the  
principle of the  
bull of Pius V

Treasonable de-  
signs of the Ro-  
man Catholics.

Stat. 23 Eliza-  
beth, c. 1.

<sup>31</sup> 1 Butler's Hist. Rom. Cath. 366. Lord Burleigh's Execution of Justice for Treason, 12, 13. Jesuits' Memorial, 26. Card. Allen's Admonition, c. 2.



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them from the established religion, to the Romish religion, or who should move them to promise any obedience to any pretended authority of the See of Rome, or to any other potentate, or do any overt act for that purpose, should be adjudged traitors, and suffer and forfeit, as in the case of high treason."

Persons absolved, and their aiders and abettors, and persons knowing and not disclosing those practices, were rendered guilty of misprision of treason. Every person saying mass was to forfeit two hundred marks, and every person hearing it one hundred; and each was to be imprisoned for a year, and till he paid the fine. Every person above the age of sixteen years, who should forbear from going to church, or to the usual place of common prayer, contrary to Stat. 1 Elizabeth, c. 2, was, upon conviction, to pay 20*l.* for every month; and if he should absent himself from it during a whole year, he was to be bound in 200*l.* sterling for his good behaviour. Persons keeping schoolmasters, either not conforming, or unlicensed by the bishop of the diocese, were to pay, for every month, 10*l.*, and the schoolmaster was to be imprisoned for a year.

Penalties for  
non-observance  
of Stat. 1 Eliza-  
beth, c. 2.

Jesuits defined.

The votaries of Rome having imported a dangerous body called "jesuits,"—a set of men whose mental and physical energies, were ever on the alert for the execution of any treason, murder, or felony;—the legislature were compelled to repress this nuisance, and the Stat. 27 Elizabeth, c. 2, —after reciting that "divers persons, called or professed jesuits, seminary priests, and other priests, who had been, and from time to time were made, in the parts beyond the seas, by or according to the order and rites of the Romish church, had of late years come in, and been sent, into the realm of England, and other of the queen's majesty's dominions, of purpose, (as it had appeared, as well by sundry of their own examinations and confessions, as by divers other manifest means and proofs,) not only to withdraw her highness's subjects from their due obedience to her majesty, but also to stir up and move sedition, rebellion, and open hostility within her highness's realms and dominions, to the great endangering of the safety of her most royal person, and to the utter ruin, desolation, and overthrow of the whole realm, if the same should not be sooner, by some good means, be foreseen and prevented,"—enacted,

Repressed by  
Stat. 27 Elizabeth,  
c. 2.

Expulsion of  
Jesuits from Eng-  
land.

That, all jesuits, seminary and other priests, ordained since

the feast of the nativity of St. John Baptist, in the first year of her majesty's reign, should, within forty days after the end of the then session of parliament, depart out of the realm.

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That jesuits, seminary and other priests, religious or ecclesiastical persons, ordained or professed since the same time, should not come into or stay in the realm, under pain of being judged and suffering death as in the case of high treason.

That every one who should, after the forty days limited, receive, relieve, comfort, or maintain any such jesuit, missionary, or other priest, knowing him to be such, should be adjudged a felon, and suffer death without benefit of clergy.

Felony to receive or maintain a jesuit.

That if any subject, not being a jesuit, missionary, or other priest, brought up in any college of jesuits, or in any seminary in foreign parts, should not, within six months after proclamation made in the city of London, return and submit to her majesty and her laws, and take the oath prescribed by the act of the first year of her majesty, or should otherwise return without submission, he should suffer as in the case of high treason.

That if any person should send or give any money or relief to any jesuit, missionary, or other priest, or to any college of jesuits, or to any seminary, or to any person in the same, or to any one returned thence without submission, every person so offending, should incur the danger and penalty of *præmunire*.

Education forbidden at any college of jesuits.

And that every person who, after the forty days, should know of any jesuit, seminary, or other priest, that did abide in the realm, and should not discover the same to some justice of the peace, or other higher officer, within twelve days after knowledge, he should be fined and imprisoned at the queen's pleasure.

The object of the Statutes of Recusancy was to compel a regular attendance at the service of the church. For this purpose, Stat. 1 & 23 Elizabeth, cc. 2 & 1, as previously stated, subjected those, who absented themselves from church, to a forfeiture of 1s. to the poor for every Lord's day on which they should so absent themselves, and of 20*l.* to the crown if they continued such absence for a month together. Every fourth Sunday of absence being held to complete the month, and thus thirteen months were, in relation to these penalties, supposed to occur in every year. And those who

Object of the Statutes of Recusancy.

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Obstinately refusing to attend the service of the church, or impugning the ecclesiastical authority of the queen.

Stat. 35 Elizabeth, c. 1.

so absented themselves from the English Catholic church, obtained the appellation of "recusants."

By Stat. 35 Elizabeth, c. 1, persons obstinately refusing to attend the service of the church, or impugning the authority of the queen in ecclesiastical causes, or persuading others to do so, or assisting at unlawful assemblies or conventions of religion, were to be committed to prison, and to remain there, till their conformity to the established church, or till they made the submission and declaration contained in the act. By this they were to acknowledge their offence to God, in contemning her majesty's authority, to declare that no person had any power or authority over her, and to promise to obey in future all her laws,—those in particular which prescribed attendance at the service of the church. Offenders not conforming, were ordered to abjure the realm, and depart from it, as in cases of abjuration for felony; if they refused to abjure the realm, or afterwards returned to it, they were to be adjudged guilty of felony without benefit of clergy, and to forfeit to her majesty all their goods and chattels absolutely, and the income of their real estate during their lives.

Popish recusants-convict.

Stat. 35 Elizabeth, c. 2.

These penalties not being thought sufficiently severe for public safety, "popish recusants-convict" were, by Stat. 35 Elizabeth, c. 2, ordered to return to their usual places of abode, under pain of forfeiting their personal property and for their lives losing the issues of their real property, and if they removed from their dwellings to a greater distance than five miles, they were subjected to a similar penalty; a jesuit, seminary, or other<sup>1</sup>massing priest, who, on his examinations before a magistrate, should refuse to answer directly whether he were a jesuit, a seminary, or a massing priest, was to be committed to prison, to remain there, till answer, without bail or mainprize.

Distinction between "Protestants" and "popish recusants."

Till Stat. 35 Elizabeth, c. 2, Protestants and Catholics were equally considered and called "recusants," and equally subject to the penalties of recusancy;—this being the first penal law against popish "recusants," by that name, and as distinguished from other recusants<sup>22</sup>.

This statute gave rise to the distinction between "Protestant" and "popish recusants:" the former were subject to such statutes of recusancy as preceded that of the thirty-fifth

<sup>22</sup> See the Articles annexed to the Commission for Recusants. 4 Strype's Ann. 301, 419. 1 Butler's Hist. Rom. Cath. 292.

of Queen Elizabeth, and to some statutes against recusancy which were made subsequently to that time; but they were relieved from them by the Act of Toleration in the reign of William III.; and from Stat. 35 Elizabeth, c. 2, arose also the distinction between papists,—persons professing the popish religion,—popish recusants,—and popish recusants-convict.

Notwithstanding the frequent mention in the Statute Book of papists, and persons professing the popish religion, neither the statutes themselves, nor the cases adjudged upon them, present a clear notion of the acts or circumstances which, in the eye of the law, constituted a papist, or a person professing the popish religion. When a person of that description absented himself from church, he filled the legal description of a “popish recusant;” when he was convicted, in a court of law, of absenting himself from church, he was termed in the law a “popish recusant-convict.” To this must be added the constructive recusancy, which was subsequently incurred by a refusal to take the oath of supremacy<sup>23</sup>.

The most intolerant blood-thirsty sects, are ever the readiest to exclaim most loudly against the abominable cruelty and injustice of persecution for conscience' sake, when they themselves are only subjected to justifiable restrictions: thus, these statutes have been held up as an instance of intolerance on the part of the Anglican church, and that the conduct of the Roman Catholics did not justify such severity; the best answer to such calumnies is, the bull by Sixtus V., which was granted to Philip when the Armada was almost ready to sail, with directions for the publication of it as soon as the Spanish army should land in England; but Cardinal Allen was ordered to notify, in the mean time, the contents of it to the English Roman Catholics, which he did by a small pamphlet, intituled, “The Declaration of the Sentence of Sixtus Quintus.”

It begins with calling “the queen's government impious and unjust, herself an usurper, obstinate, and impenitent, and so no good to be expected, unless she should be deprived.

“Therefore Pope Sixtus V., moved by his own and his predecessor's zeal, and the vehement desire of some principal Englishmen, hath used great diligence with divers princes, especially with the Spanish king, to use all his force, that she

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The circumstances which constituted a papist, not clearly defined.

The most blood-thirsty sects, ever the first to exclaim against persecution.

“The Declaration of the Sentence of Sixtus Quintus.”

<sup>23</sup> 1 Butler's Hist. Rom. Cath. 293.

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might be turned out of her dominions, and her adherents punished. And all this for good reasons.

"Because she is an heretic, schismatic, is excommunicated by former popes; is contumacious, disobedient to the Roman bishop, and hath taken to herself the ecclesiastical jurisdiction over the souls of men.

None to be monarchs of England, but by leave of the pope.

"Because she hath, against all law and right, usurped the kingdom; seeing none must be monarchs of England, but by the leave and consent of the pope.

"Because she hath committed many injuries, extortions, and other wrongs against her subjects.

"Because she hath stirred up seditions and rebellions between the inhabitants of neighbour countries.

"Because she hath entertained fugitives and rebels of other nations.

"Because she sent and procured the Turks to invade Christendom.

"Because she persecuted the English Romanists, cut off the Queen of Scots, and abolished the Roman religion<sup>24</sup>.

Obscure people promoted, instead of the ancient nobility.

"Because she hath rejected and excluded the ancient nobility, and promoted to honour obscure people; and also useth tyranny.

The subject, absolved from allegiance to Elizabeth.

"Wherefore, seeing these offences, some of them rendering her incapable of the kingdom, others unworthy to live, his Holiness, by the power of God and the apostles, reneweth the censures of Pius V. and Gregory XIII. against her, excommunicates and deprives her of all royal dignity, titles, rights, and pretences to England and Ireland; declares her illegitimate, and an usurper of the kingdoms, and absolves all her subjects from their obedience and oaths of allegiance due to her.

"So he expressly commandeth all, under pain and penalty

<sup>24</sup> The church of Rome calls herself "the Catholic church," and asserts that "they who believe the holy Catholic church must necessarily believe that the doctrine propounded by her is that which was revealed by the Son of God." But the Church of Rome is not the Catholic or universal church: which consists of all the different particular churches scattered throughout the world. One part of this church she may be, though one of the most corrupted parts of it; but she is no more the whole Catholic or universal church, "than," according to Archbishop Becker's definition, "one diseased limb, though perhaps the larger for being diseased, is the whole body of a man." Whatever, therefore, may be believed concerning the holy Catholic church, needs not to be believed concerning the Church of Rome.—Vide Mant's *Romanism and Holy Scripture*, 66.

of God's wrath, to yield her no obedience, aid, or favour whatsoever, but to employ all their power against her, and to join themselves with the Spanish forces, who will not hurt the nation, nor alter their laws or privileges, only punish the wicked heretics.

"Therefore, by those presents, he declares, that it is not only lawful, but commendable, to lay hands on the said usurper, and other her adherents, and for so doing, they shall be well rewarded.

"And lastly, to all these Roman assistants, is liberally granted a plenary indulgence and remission of all their sins <sup>25 26</sup>."

The foregoing documents, connected with those that have been cited in the reigns of Henry VIII. and Edward VI., are the constitutional basis of the English Catholic Church as the changes which have been subsequently sanctioned, are comparatively unimportant.

Dr. Short, in his learned "History of the Church of England," thus sums up the religious beneficial effects which have resulted from the Reformation. "We have learnt the fundamental truth on which the whole of Christianity rests, nay, which is itself Christianity; that 'we are accounted righteous before God only for the merit of our Lord and Saviour Jesus Christ, by faith, and not of our own works or deservings.' That good works, however pleasing to God, are only accepted as proofs of the faith which we entertain of the mercy of heaven, and as proceeding from love towards Him who hath redeemed us. That acts of penitence, however sincere, can in no case be deemed a compensation for our sin, although they may prove useful to ourselves in preventing a repetition of our crimes; and that there is no sacrifice for sin, but the atonement which was once offered on the cross.

"The establishment of these truths virtually got rid of the greater part of the superstitious rites with which religion had been overwhelmed; and she was again enthroned in the heart of the true believer, instead of being identified with ceremonious observances.

"A communion had been substituted in lieu of the mass; The communion.

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Standard and basis of the Church of England.

Religious beneficial effects of the Reformation.

Good works only accepted as proofs of faith.

<sup>25</sup> 2 Butler, Hist. Rom. Cath. 3—5.

<sup>26</sup> 1 Thuanus, Hist. 89. 1 Meteren, Hist. du Pays Bas, 15, La Haye, 1681. Foulis, 2nd edit. 350. 10 Purchase's Pilgrims, c. 11.

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and with the rejection of the doctrine of transubstantiation, the laity were taught that the body and blood of Christ are verily and indeed taken by the faithful alone in the Lord's Supper; the efficacy of which consists in the institution of Christ, and the state of their own consciences, and not in the magic virtue of priestly offices.

Personal responsibility of the individual Christian.

"The personal responsibility of the individual Christian was clearly insisted on; and though the laity were not deprived of the comfort and aid of spiritual guidance, yet that inquisitorial power which the clergy had exercised, by means of auricular confession was removed, and the priesthood became the directors of their flocks, and not the self-constituted judges of the terms on which pardon might be obtained from the Almighty. They were still the keepers of the keys of the kingdom of heaven; but by the dissemination of the Scriptures, and the progress of education, the rest of their brethren were permitted to guide their own footsteps towards the gates of paradise.

The Bible.

"The Bible was indeed committed to their peculiar care, but it was not withheld from the hands of the people; so that though it was their especial duty to lead on their fellow servants in the right path, yet they could no longer, like the lawyers of old, take away the key from others, or prevent those from entering in who would gladly do so.

Self-examination.

"All were taught to examine for themselves; and though little toleration was now granted to any who ventured to differ from the queen, yet the first great step towards religious liberty was irrevocably made, when it was authoritatively asserted, that every assembly of human beings was liable to err, even in things pertaining to God.

Diminution of the power of the church.

"At the same time a very material diminution was made in the power of the church, considered as a body distinct from the laity, when its members were allowed to connect themselves to the rest of society, by those ties of matrimony which the laws of God has left open to all: for these bands, which attach the individual churchman to the nearer concerns of private life, cannot fail to weaken the interest he feels in the political welfare of the ecclesiastical body, to which alone the earthly affections of the unmarried must be wedded.

Property of the church.

"The property of the church, and that influence which is ever connected with its possession, had undoubtedly in former times been too great for the welfare of the kingdom; but the

Protestant monarchs had taken good care to prevent the recurrence of this evil: nor can it be denied, that the poverty which succeeded its too wealthy state, was in many respects injurious to the cause of vital religion, as it neither afforded the ministers of God's word such facilities for education as their profession required, nor gave them the means of keeping up this outward respectability before their flocks. This was peculiarly felt by many of the newly-appointed bishops, who, returning pennyless from their foreign hiding-places, found themselves on a sudden exalted into situations, from which much worldly pomp had always been expected, and for the supply of which, the revenues of their preferments were totally inadequate.

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"They were forced, therefore, in their prosperity, to exercise that patience which they had long practised in the hour of misfortune; and by the sacrifices which they were called on to make, the momentous truth was daily impressed on them, a truth which it would be well if none of us forgot, that the church establishment is intended to promote the cause of religion, and not religion to advance the interests of the

The church intended to promote the cause of religion, not religion to advance the interests of the church.

In conclusion,—The Statutes and Acts of Convocation, by which the "Reformation" was accomplished, have been cited, from whence it will be perceived that the identity of the "English Catholic Church" was not destroyed under the Tudors.

IDENTITY OF THE  
ENGLISH CATHOLIC  
CHURCH NOT  
DESTROYED  
UNDER THE TU-  
DORS.

The only difference in the "English Catholic Church" as it existed previous to the dynasty of the Tudors, and as it stood at the termination of the reign of Elizabeth, was, that certain ecclesiastical abuses had arisen, which were corrected by parliament and the clerical synods in convocation under Henry VIII., Edward VI., and Elizabeth; but the identity of the "English Catholic Church" was never destroyed.

The best illustration of the mode in which the Reformation was effected, is Stat. 5 and 6 William IV. c. 76. It having been proved that positive abuses existed in "Municipal Corporations," parliament, in 1835, made enactments to correct such abuses, but in all other respects the rights of such corporations were left unimpaired, and no corporation lost its original identity.

Illustration of  
the mode in  
which the Reformation  
was effected.



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So with the "English Catholic Church." It having been proved that positive abuses existed in the "English Catholic Church," its clerical synods in convocation, its lay synods in parliament, or the crown, by power placed in its hands by the joint authority of those synods, made, during the reigns of Henry VIII., Edward VI., and Elizabeth, certain enactments to correct such abuses, but in all other respects the rights of the "English Catholic Church" were, essentially, left unimpaired, and the "English Catholic Church" never lost its original identity.

That sect commonly called "Roman Catholics," are a mere body of dissenters from the English Catholic church.

That sect which is now commonly called "Roman Catholics" are nothing but a mere body of dissenters from the "English Catholic Church," and have never, constitutionally speaking, been arbitrarily deprived of a vested right. However numerous and respectable, they did and could dissent only in their individual and private, and not in any corporate or collective capacity, from the authoritative regulations and changes made by the legally-constituted powers, to whom alone belonged the right to decide on matters of doctrine and practice.

The Church of Rome of the present day, cannot be identified with the Church of England previous to the Reformation.

The Church of Rome at the present day, cannot be identified with the Church of England previous to the Reformation: the Roman Catholic bishops in England and Scotland<sup>28</sup> are bishops of foreign sees, and neither they, nor those who have been schismatically consecrated for the sees in Ireland, which at the time were canonically filled, can trace any descent from the bishops of the ancient churches in these kingdoms: the now bishops of the Church of England, being the only representatives by *episcopal succession* of the ancient Celtic and Anglo-Saxon churches; and the strongest illustration of this position is, that

<sup>28</sup> "The Irish bishops almost unanimously consented, in the beginning of Elizabeth's reign, to remove the jurisdiction of the Roman pontiff."—Leland's Hist. Ireland, book iv. c. 1. The consequence was, that for a length of time there were scarcely any popish bishops in Ireland. M'Gavran, titular Archbishop of Armagh, was sent over from Spain. In 1621, we are informed by O'Sullivan's Hist. Cath. Ibernice, "that there were two popish bishops in Ireland, and two others who resided in Spain. These persons were ordained in foreign countries, and could not trace their ordinations to the ancient Irish church."—Palmer's Antiq. Engl. Ritual vol. ii. 252, note. In Ireland, the only representative, by episcopal succession, of the church which St. Patrick founded, which for seven hundred years (i. e., till the year 1152,) rejected the Roman jurisdiction and which, after four hundred years' experience of that tyranny, recovered its ancient freedom, is the reformed Catholic church at this day established there.

the votaries of the Roman Catholic religion are distinguished by the adoption of a new creed, which the "English Catholic Church" at no one period of her existence ever recognised<sup>29</sup>.

If any severity was unjustly exercised against the Roman Catholic dissenters, it was in consequence of their secession from the "English Catholic Church," and of their treasonable, though they might be conscientious, efforts to subvert those ecclesiastical institutions, which had been established by the legislature,—conceiving the Bishop of Rome to be more powerful than the king, lords, and commons, united with the clerical synods in convocation, a principle subversive of the common and statute law, and as utterly inconsistent with national freedom and prosperity, as it is with common sense, and with the decrees of the ancient councils.

ELIZABETH.  
1558—1603.

Severity exercised against the Roman Catholics, on account of their treasonable efforts to subvert the English Catholic church.

<sup>29</sup> The errors which had been put forth by some of the councils in the middle ages, had never been before intruded into the public professions of the Christian church. With regard to the most remarkable of those errors, those propounded by the second Nicene Council (A. D. 786), touching image-worship, and by the fourth Lateran (1215), which made a belief in transubstantiation necessary to salvation, it is worthy of remark that both these met with the most determined opposition from the English church. The English bishops joined with those of France and Germany, at the Council of Francfort (794), in rejecting and condemning the decrees of the second Nicene Council; and the doctrine of transubstantiation was so strenuously attacked by the Anglo-Saxon writers, that the learned Mr. Johnson, who edited the Anglo-Saxon Canons, does not hesitate to say that the Homilies of Ælfric are more strongly opposed to that doctrine than the present Homilies of the Church of England. And though for a time the church in this kingdom did afterwards entertain that error, and for three hundred years acquiesced in the [pretended] decrees of the Council of Lateran, which first made a belief in it necessary to salvation, yet it was with great and ill-concealed reluctance. So much so, that Tonstal, Bishop of Durham, who twice suffered deprivation for his adherence to the Bishop of Rome, and must therefore be admitted to be an impartial witness, speaking of our Lord's presence in the eucharist, says thus, "*De modo quo id fiat, satius erat curiosum quemque relinquere sue conjecturæ, sicut liberum fuit ante Concilium Lateranum.*"—*De Eucharistiâ*, lib. i. 46. The Church of England has nearly, if not quite, fulfilled the wish of the good bishop. For though in her Articles an opinion is plainly expressed against the doctrine, salvation is not denied, nor communion refused to those who hold it, of which a practical proof was afforded, when, for the first fifteen years of Queen Elizabeth's reign, almost the entire body of those in this kingdom who adhered to the Roman doctrine, conformed to our worship, and communicated in our churches.

This and the preceding note have been extracted from a Letter to the Members of Parliament, by the Hon. and Rev. A. P. Perceval, Lond. 1834; and the publications of that reverend author, on the Roman controversy, clearly demonstrate, that the Schism which interrupts the communion between the Churches of Rome and England, is wholly the work of the former, whose schismatical conduct has even brought into question her claim to the appellation of "Catholic."

## CHAPTER VII. THE HOUSE OF STUART.

A.D. 1603—1702.

JAMES I.—CHARLES I.—CHARLES II.—JAMES II.—WILLIAM AND MARY.

### SECTION I.

JAMES I., March 24, A. D. 1603,—March 27, A. D. 1625.

- |                                    |                                   |
|------------------------------------|-----------------------------------|
| 1. Title of James I. to the Crown. | 4. Taxes cannot be levied without |
| 2. Improper Influence exercised    | Consent of Parliament.            |
| over the Borough institutions.     | 5. Privilege of Parliament.       |
| 3. Prerogative of the Crown.       | 6. The Reformation.               |

#### 1. *Title of James I. to the Crown.*

**JAMES I.**  
**1603—1625.**

AFTER the power of alienation, as well as the increase of commerce, had thrown the balance of property into the hands of the commons, the situation of affairs and the dispositions of men became susceptible of a more regular plan of liberty; and the laws were not supported singly by the authority of the sovereign.

An acquaintance with the remains of antiquity, had excited a passion for a limited constitution, and begat an emulation of those virtues, which the Greek and Roman authors had recommended.

The severe government of Elizabeth had confined this rising spirit; but when a new and a foreign family succeeded to the throne, with a prince less dreaded and less beloved, the principles of liberty appeared in the nation, and the disputes which arose during the dynasty of the Stuarts, had no less an object than to determine and establish the political constitution of England; and the agitation produced by so important a controversy, could not fail to rouse the passions of men, to call forth and display their most eminent characters, and to develop those combinations and occurrences, which tended to facilitate or to obstruct, the improvement of civil society.

In every government, the magistrate must either possess a large revenue and a military force, or enjoy some discretionary powers, in order to execute the laws and support his own authority.

The House of Stuart were not supported either by money or by force of arms, and therefore were extremely jealous of

The disputes under the Stuarts, were for the establishment of a political constitution.

their "prerogative," being sensible that when bereft of that privilege, they possessed no abstract influence by which they could maintain their dignity or support the laws.

From religious dissensions, and for the depression of the nobility;—the parliament, and the majority of the nation, had united in superseding all laws, and levelling all limitations to the royal prerogative; in fact, from envy, and Roman Catholic treason, the "Charters of Liberty" had been delivered up to the despotic will of the House of Tudor, but as the danger of Roman Catholic supremacy ceased, so also were the nation energetic in requiring a surrender of their liberties, which had been, in some respects, so shamefully abused,—and it is to the democratic puritans that the regeneration of British freedom may in some measure be ascribed,—but their actions were not influenced by the pure spirit of national independence, as in truth, like all political "patriots," they only "bellowed for liberty to-day, that they might roar for power to-morrow!"

Richard II., by influencing elections,—Mary, by corrupting the members,—and Elizabeth, by intimidating them,—acquired an ascendancy over British freedom: James did not pursue the policy of Richard or Elizabeth, for want of capacity and resolution,—he could not pursue the example of Mary, in consequence of his not having pecuniary funds, or, to adopt the language of Bolingbroke, "If King James had been rich, (and it was in his power to have been so,) and luxury, and the offspring of luxury, corruption, both which he introduced, prevailed in the body of the people, an indirect and private influence might have been established, the nation might have been enslaved, by the least beloved, and the most despised of all her kings."

But the king continued poor; and indirect and private influence over parliament was either not attempted, or attempted without effect; because, as neither "pelf," nor "corporal punishment," was to be acquired or dreaded, the patriotic commons considered "honesty was the best policy," and thus constitutional liberties were ultimately obtained from the independency of parliament.

JAMES I.  
1603—1625.

The laws had been superseded from religious dissensions and for the depression of the nobility.

Regeneration of British liberty.

Liberty preserved by preserving the independency of parliaments.

<sup>1</sup> "Puritanism indeed," says South, "is only reformed jesuitism, as jesuitism is nothing else but popish puritanism: and I could draw out such an exact parallel between them, both as to principles and practices, that it would quickly appear they are as truly brothers as ever were Romulus and Remus; and that they sucked their principles from the same wolf." Vol. iii. 535.

**JAMES I.  
1603—1625.**

Parliamentary  
recognition of the  
hereditary right  
of James to the  
crown.

James procured a parliamentary acknowledgment that, "Immediately on the decease of Elizabeth, the imperial crown of the realm of England did, by inherent birthright, and lawful and undoubted succession, descend and come to his most excellent majesty, as being lineally, justly, and lawfully, next, and sole heir of the blood-royal of this kingdom<sup>2</sup>;" and subsequently claimed a right to govern the country as an absolute sovereign, by mere "prerogative:"—that is, having a capacity to act in opposition to positive law, either in cases of life or sequestration of property, whenever incited by personal caprice.

No authority, for  
an abstract heredi-  
tary right to the  
crown of  
England.

As to the authority of any person claiming an abstract hereditary right to the crown of England, history unfolds facts, which essentially militate against such a proposition. Our kings of the Norman race were so far from succeeding as next heirs to one another, in a regular course of descent, that, as Bolingbroke observes, no instance can be produced of the next heir's succeeding, which is not preceded and followed by instances of the next heir's being set aside.

Henry VII. had  
no hereditary  
right to the  
crown.

The British race began in Henry VII.: and from him alone James derived that right which he asserted in such pompous terms; that undoubted right to the throne, as he called it in his first speech to parliament, "which God, by birthright and lineal descent, had, in fulness of time, provided for him." If ever any prince came to the crown without the least colour of hereditary right, it was Henry VII.: he had no pretence to it, even as heir of the House of Lancaster. His wife might have some, as heir of the House of York; though her hereditary title was not free from objections, which the character of Edward IV. rendered probable: but the title of his wife had no regard paid to it, either by him or the parliament, in making this new settlement. He gained the crown by the goodwill of the people. He kept it by the confirmation of parliament, and by his own ability.

Neither Henry  
VIII. nor Ed-  
ward VI. laid  
such stress on  
hereditary right,  
as was done by  
James I.

The national union of the two roses was a much better expedient for quiet, than foundation of right. It took place in Henry VIII.; it was continued in his successors; and the nation was willing it should continue in King James and his family. But neither Henry VIII., nor his son Edward VI., who might have done so with much better grace, laid the same stress on hereditary right, as James did. One of them

<sup>2</sup> Stat. 1 James I. c. 1.

had recourse to parliament on every occasion, where the succession to the crown was concerned; and the other made no scruple of giving the crown by will to his cousin, in prejudice of his sister's right. This right, however, such as it was, prevailed; but the authority of parliament was called in aid by Mary, to remove the objection of illegitimacy, which lay against it.

Elizabeth had so little concern about hereditary right, that she neither held, nor desired to hold, her crown by any other tenure than by Stat. 35 Henry VIII. c. 1; and by Stat. 13 Elizabeth, c. 1, it was declared high treason, during her life, and a *præmunire* after her decease, to deny the power of parliament, in limiting and binding the descent and inheritance of the crown, or the claims to it; and whatever private motives there were for putting to death Mary, Queen of Scotland, her claiming a right to the throne, in opposition to an Act of Parliament, was the foundation of the public proceedings against her.

The House of Stuart were not, in the strict sense of the word, even legitimate sovereigns; they acquired the throne from the same title as that by which the House of Brunswick became possessed of it, viz., the "will of the people,"—because, when James I. ascended the throne, no established law recognised his title;—by Stat. 28 & 35 Henry VIII. cc. 7 & 1, parliament enabled the then king to dispose of the succession by his last will signed with his own hand; in accordance with such power, Henry executed a will, by which, in default of issue from his children, the crown was entailed upon the descendants of his younger sister, Mary, Duchess of Suffolk, before those of Margaret Queen of Scots,—and there were descendants of Mary in esse at the decease of Elizabeth.

The title of the Stuarts may be thus stated. The "council of Elizabeth," influenced by Cecil, who had sordid private objects to attain, think fit, *of their own accord*, to call the king of Scotland to the throne of England, and the people quietly submit to their selection, and the parliament, to please all parties, pass a statute giving him an hereditary title,—at the expense of veracity—and to show their contempt of statutes, when in opposition to the political patriotism of the moment<sup>3</sup>.

JAMES I.  
1603—1625.

Power of parliament to limit or bind the descent and inheritance of the crown.

The House of Stuart not legitimate sovereigns.

Title of the Stuarts.

<sup>3</sup> Earl of Monmouth's Memoirs, 176. 3 D'Israeli's Curiosities of Literature, 107. 1 Hallam's Const. Hist. 392—401. Vide ante infra, 165, 166.

## 2. *Improper Influence exercised over the Borough Institutions.*

JAMES I.  
1603—1625.

Influence over  
the boroughs.

Royal proclama-  
tion respecting  
the choice of  
knights and  
burgesses.

James, in order to introduce his miserable satellites, pursued the policy of Elizabeth, by increasing the members of the House of Commons, and accordingly six new boroughs were summoned, and eight old boroughs restored<sup>1</sup>.

The king, on calling a parliament, in 1604, issued a proclamation, charging all persons interested in the choice of knights to select them out of the principal knights or gentlemen within the county; and for the burgesses, that choice be made of men of sufficiency and discretion, without desire to please parents and friends, that often speak for their children or kindred; avoiding persons noted in religion for their superstitious blindness one way, or for their turbulent humour otherways,—that no bankrupts or outlaws be chosen, but men of known good behaviour and sufficient livelihood,—that sheriff's should not direct a writ to any ancient town, being so ruined that there were not residents sufficient to make such choice, and of whom such lawful election may be made,—that all returns should be filed in chancery, and if any were found contrary to his "proclamation," the same were to be rejected as unlawful and insufficient, and the place to be fined for making it; and any elected contrary to its purport, effect, and true meaning, were to be fined and imprisoned<sup>2</sup>.

Supposition that  
"undertakers"  
had engaged to  
secure a court  
majority.

So strong was the supposition of the king's disposition to control the parliament, that it was universally credited that the "undertakers" attached to the king had laid a regular plan for the new elections, and, from their influence, had undertaken to secure a majority for the court.

These sentiments, united with the proclamation, universally excited suspicions of the darkest nature, and the parliamentary elections were henceforth contested with a vigour hitherto unparalleled, and every ambitious and powerful commoner was desirous of becoming a member of parliament.

The ascertainment of that class of persons, who had an exclusive right to exercise the elective franchise, began in this

<sup>1</sup> The members of the House of Peers in the first parliament of this reign were seventy-eight temporal peers, and four hundred and sixty-seven members composed the House of Commons: the number of peers in the first parliament of Charles I. were ninety-seven, and the commons consisted of four hundred and ninety-four members.

<sup>2</sup> 1 Parl. Hist. 967. M. and S. Hist. Boroughs, 1470. Com. Journ. 12 April, 2 May, 1614.

reign to be a consideration of vital interest; because the crown had wilfully made many unconstitutional alterations in the borough institutions; and it became requisite that the House should interpose, to destroy the mischiefs which had arisen, and to frustrate those that were meditated. This imperceptibly led to the formation of that committee, whose decisions have been reported by Serjeant Glanville, and from which decisions the proposition is established, that the "inhabitant householders of every city and borough, were its citizens and burgesses."

JAMES I.  
1603—1625.

"Citizens" and  
"burgesses"  
were the inhabit-  
ant house-  
holders.

Thus in the Cirencester case, it was resolved, "That there being no certain custom or prescription who should be electors, recourse must be had to the common right, which, to this purpose, was held to be, that more than the freeholders only ought to have voice in the election, viz., all men inhabitants, householders, residents within the borough."

Cirencester case.

In the Chippenham case, it was resolved "that they would forbear giving any opinion whether the borough was a corporation by prescription, before the Charter of Queen Mary, it not being material to the question; for the borough might have a right to return members of parliament, though it was no corporation."

Chippenham  
case.

They also resolved, that "the Charter of Queen Mary did not, nor could alter the form and right of election; so that if before all the burgesses and inhabitants called freemen, or any other larger number of qualified persons had always used, and ought of right to make the election, then the charter, although it might incorporate this town, which was not incorporated before, or alter the name or form of the corporation in matters concerning only themselves, and their own government, rights, and privileges, yet it could not alter nor abridge the general freedom and form of election of burgesses to parliament, wherein the commonwealth is interested.

Charter of the  
crown cannot  
alter the elective  
franchise.

"For then, by the like reason, it might be brought from the whole commonalty, or from all the burgesses of a town, to a bailiff and twelve, so it might be brought to a bailiff and one or two burgesses, or to the bailiff alone; which is against the general liberty of the realm, that favoureth all means tending to make the election of burgesses to be with the most indifferency, which, by common presumption, is when the same are made by the greatest number of voices that reasonably may be had, whereby there will be less danger of packing, or



JAMES I.  
1603—1625.

indirect proceedings. And howsoever the said letters patent, touching some other points, may have made an alteration in the borough, yet, touching the matter of election of burgesses to the parliament, the form remaineth, and the same course is to be held, as was of right before the said letters patent."

It was therefore further resolved by the committee that more than the bailiffs and the twelve incorporated burgesses ought to have voices in the elections for Chippenham.

And as it had been urged that the former returns by bailiff and burgesses might well be satisfied, if only the bailiff and twelve joined in the election, it was resolved, "though that were true, yet they would be more proper if the bailiff, and all the other burgesses, freemen, and inhabitants, be therein comprised."

"And as to the course since 35 Elizabeth, it was to be intended, that it was only by colour of the void charter, and of precedents passed in silence, and without opposition."

Winchelsea case.

Bye-law cannot alter the right of election.

In the Winchelsea case it was resolved, "That a bye-law could not alter the right of election, but was for that purpose utterly void, for that the freedom of election could not be restrained by any private ordinance, and" that voters keeping houses in the place might return at their pleasure; "but as they had not been absent a year and a day, and it did not appear that they removed to dwell elsewhere, with a purpose of settling there, they were by the common law such inhabitants as ought to vote."

No prescriptive custom for returning members of parliament.

With respect to the Cirencester case, it is clear there can be no prescriptive custom for returning members of parliament, for that institution did not exist before the time of legal memory, and therefore the common law must decide the right of burgess-ship.

Borough rights and corporate rights distinct.

The Chippenham case establishes, first, that "borough rights" and "corporate rights" were distinct; as the borough might return members of parliament, although it had no corporation, which position is forcibly exemplified in the case of Taunton: and, secondly, that the king's authority is subject to that of the common law, and that he cannot by charter divest a person of any right in which the commonwealth is interested:—and usage to the contrary was properly disregarded.

The crown cannot divest a person of a public right.

Responsible residency gave a right to exercise the elective franchise.

In the Winchelsea case, bye-laws were held not to have a binding effect, when they restrained the freedom of election,

and responsible residency was defined according to the common law, to give the right of exercising the elective franchise".

JAMES I.  
1603—1625.

The courts of law were equally explicit in defining the qualifications of a burgess: thus, an information having been instituted against a widow\* for prisage of wines, which had been imported in four ships, two of which arrived in the lifetime of her husband, and two after his death; the defendant alleged, that she was a free woman, and claimed exemption under the charter of 1 Edward III., which had been granted to the "mayor, commonalty, and citizens of London," and that her husband had been a freeman and a citizen.

Legal decisions as to the qualifications of a burgess.

Croke, justice, said, that it was not sufficient that a person was born, or had come to the place, but he ought to be a citizen, resident, and commorant,—an inhabitant of the place, "*civis residens et commorans, incolae civitatis*:" and the case of Knowles (4 Henry VI.) was cited, who removed his household *cum pannis*, and dwelt at Bristol, but kept his shop in London, and claimed discharge from prisage; but it was voted against him, for he was not such a citizen as could claim the discharge, he ought to be "*civis, incolae, commorans*."

To be a "citizen," inhabitancy requisite.

In the reign of Henry VI., complaint was made that the Lord Mayor of London made strangers citizens; and it was declared that "the discharge from prisage did not extend to such citizens as were '*dotati*,' made free, but to those only who were commorant—incolant—and resident within the city."

Mr. Justice Williams cited 46 Edward III., fol. 13, that "he is a citizen who is commorant and an inhabitant, and subject to pay scot and lot. If he dwell in another place, he shall not be free."

A "citizen" must pay "scot and lot."

Yelverton, justice, referred to the case of Sacheverel, who, though he bore *civilia et publica onera*, yet he was not entitled to the benefit, for he was not "*incolae*," but only domicilianus, or chamberer. He was a citizen, a freeman, and a commorant; but he ought to be "*inquilinus*," and have a house, &c.; and no person would be entitled by being locally within the city, unless he bore its burdens.

Case of Sacheverel.

Mr. Justice Houghton referred to Otes' case<sup>3</sup>, in which it

Otes' case.

<sup>3</sup> Glanv. Rep. 104, 53, 12, M. and S. Hist. Boroughs, 1190, 1546—1576.

<sup>4</sup> Waller v. Hanger. 2 Bulst. 134, 261. 3 Bulst. 1. M. and S. Hist. Boroughs, 1478. Steph. on Corp. Ref. 33, et seq. Lond., 1835.

<sup>5</sup> Lib. Ass. 38 Edward III., pl. 13. Year Book, 45 Edward III. fol. 26. Et etiam Regiam Majestatem.

JAMES I.  
1603—1625.

was said by Finchden, that “ the citizens to whom the privileges extended, were those who were born or inherited in the city, or who were resiant and taxable to scot and lot, and that he which is not so, shall not be said to be a citizen—unless he is commorant and resiant, subject to pay scot for payments, and lot to supply the places and offices there heritable; and if he be not such a one, he shall not be said to be within the privilege of a citizen.”

A “ citizen ”  
must be an “ in-  
habitant house-  
holder.”

*Dodridge*, justice, said, that “ the persons who should have the benefit of discharge under the charters as citizens, were freemen and commorant, not in a chamber, but to keep a settled house there.”

A colourable  
residence, not  
sufficient for citi-  
zenship.

*Coke*, chief justice, said, “ one may be a citizen in fact, and not by residence, and such a one is not in judgment of law a citizen: for which he cited 35 Henry VI., fol. 12, 36 Henry VI., fol. 28, which was the case of a person not dwelling in London, and 4 Edward IV., fol. 10, where one is mentioned as a citizen of London, and dwelling in another place; so, also, if he is resident only in name, that is not good. If he be not a citizen and a freeman, he cannot devise his lands in mortmain; so if he be but ‘ inquilinus,’ this will not serve his turn; he ought to be a continuing citizen and resident,—he ought to have *jus habitationis et jus societatis*. If in the interim he happens to be disfranchised, he shall not have the benefit, for he ought to be a continual citizen. If all these concur in him, and he continues to be ‘ *cicis*,’ then he is every way complete, and enabled to enjoy the benefit.”

“ Responsible  
resiancy ” con-  
fers, at the pre-  
sent moment, a  
constitutional  
right to the par-  
liamentary and  
municipal fran-  
chises.

It is impossible that parliamentary and legal decisions could be more conclusive than the foregoing, for the recognition of the principle, that where a person was locally liable to the borough burdens by virtue of his tenure and resiancy, no matter how small the amount, he was entitled to an unqualified participation in the parliamentary and municipal franchises; and, constitutionally speaking, such rights exist at the present moment, except where there has been a last decision under Stat. 2 George II., c. 24, notwithstanding subsequent decisions of the committees of the House of Commons, judgments of the courts of law, and a continuous usage to the contrary;—because no public right, when once created, can be destroyed, otherwise than by legislative enactment.

### 3. *Prerogative of the Crown.*

James I., instead of pursuing a liberal policy, and thus respecting the national voice, conceived that illegal severity against every indication of freedom, would quell the national spirit, and thus permit him to tyrannize with impunity over the liberties of his subjects.

He adopted, as principles of ordinary government, the severe and tyrannical acts of the House of Tudor, but forgetting that the acquiescence of the people to such acts arose from the extraordinary train of events which had encouraged them; and his ministers being exalted, by their rank, above the people, occupied with intrigues for power, and either despising or ignorant of the passions with which the nation were excited, united with the king in refusing any popular concession, until the hour of conciliation had passed.

Archbishop Bancroft and the clergy inculcated the doctrine of the absolute powers of the crown, for the purpose of making the royal supremacy over the church the very instrument of its independence from the law: and, in 1605, Bancroft made complaints to the Star Chamber<sup>1</sup>, that the courts of law interfered by continual prohibitions with the ecclesiastical jurisdiction, or on the slightest suggestion of some matter belonging to the temporal court; but the judges vindicated, in every instance, their right to take cognizance of every collateral matter springing out of an ecclesiastical suit, and repelled the attack upon their power to issue prohibitions, as a strange presumption.

The clergy contended that the king's authority was sufficient to reform what was amiss in any of his own courts, all jurisdiction, spiritual and temporal, being annexed to his crown. But the judges denied that anything less than an act of parliament could alter the course of justice established by law; and the complaint of the clergy failed, as the Court of Star Chamber refused to interfere.

The question with regard to the royal power became a very dangerous subject of discussion; and without employing either ambiguous, or insignificant terms, which determined nothing, it was impossible to please both king and parliament<sup>2</sup>.

JAMES I.  
1603—1625.

Principles of absolute monarchy disseminated.

Tyrannical acts of the House of Tudor applied to ordinary government.

Clergy contend that spiritual and temporal jurisdiction is vested in the crown.

Judges deny that any thing but a statute can divert the course of justice.

<sup>1</sup> 2 Inst. 601. Collier, 608. 2 State Trials, 131. Strype's Life of Whitgift, App. 227. 1 Hallam's Const. Hist. 441.

<sup>2</sup> 5 Parl. Hist. 221.

JAMES I.  
603—1625.

Cowell's Law  
Dictionary.

Absolute power  
of the king.

The king above  
parliament.

A king in ab-  
stracto et in  
concreto.

The folly of  
James upon the  
subject of pre-  
rogative.

Dr. Cowell experienced the indignation of the commons, for having in his "Interpreter," but which was suppressed royal proclamation, improperly magnified the prerogative of the crown: thus, under the title "KING," he observes,—“He is above the law by his absolute power, and though, for the better and equal course in making laws, he do admit the three estates unto council, yet this, in divers learned men's opinion, is not of constraint, but of his own benignity, or by reason of the promise made upon the oath at the time of his coronation. And though at his coronation he take an oath not to alter the laws of the land, yet, this oath notwithstanding, he may alter or suspend any particular law that seemeth hurtful to the public estate. Thus much, in short, because I have heard some to be of opinion that the laws are above the king.”

Dr. Cowell then alludes to parliament. “Of these two one must be true,—either that the king is above the parliament, that is, the positive laws of his kingdom, or else that he is not an absolute king. And, therefore, though it be a merciful policy, and also a politic mercy, not alterable without great peril, to make laws by the consent of the whole realm, because so no part shall have cause to complain of a partiality, yet simply to bind the prince to or by these laws, were repugnant to the nature and constitution of an absolute monarchy.”

Under the title “PREROGATIVE,”—“the king, by the custom of this kingdom, maketh no laws without the consent of the three estates, though he may quash any law concluded of by them;” and that he “holds it incontrollable, that the king of England is an absolute king.”

The king himself, in his writings, was obliged to make his escape through a distinction, which he framed between a king *in abstracto*, and a king *in concreto*. An abstract king, he said, had all power; but a concrete king was bound to observe the laws of the country which he governed<sup>3</sup>.

But how bound?—by conscience only? or might his subjects resist him, and defend their privileges? This he thought not fit to explain;—and so difficult is it of explanation that the laws have maintained a total silence with regard to it.

Nothing can afford a more forcible illustration of the vanity, impolicy, and inconsistency of James upon the ques-

<sup>3</sup> Coke's Detection, 59, edit. 1607.

<sup>4</sup> King James's Works, 533.

tion of "Prerogative," than a speech he made to parliament, when asking for a supply, in the following terms: "I conclude, then, the point touching the power of kings, with this axiom of divinity, that, as to dispute *what God may do*, is blasphemy, but *what God wills*, that divines may lawfully and do ordinarily dispute and discuss; so it is sedition in subjects to dispute what a king may do in the height of his power. But just as kings will ever be willing to declare what they will do if they will not incur the curse of God, I will not be content that my power be disputed upon; but I shall ever be willing to make the reason appear of my doings, and rule my actions according to *my laws* <sup>5</sup>."

The practice of issuing commissions, by way of temporary regulation, but interfering with the subjects' liberty, in cases unprovided for by parliament, had become an instrument of tyranny. In 1610, the privy council inquired of Lord Coke, (of whom, it may be remarked, that after having acquired the highest professional honours by the meanest political sycophancy, he became, in his old age, as nothing was to be acquired by a contrary policy, an independent man,) whether the king, by his proclamation, might prohibit new buildings about London, and whether he might prohibit the making of starch from wheat,—which was done with a view to what answer the king should make to the commons' remonstrances against these proclamations. Coke, after having associated three judges with himself, resolved,—“that the king, by his proclamation, cannot create any offence which was not one before; for then he might alter the law of the land in a high point; for if he may create an offence where none is, upon that ensues fine and imprisonment,—that the king hath no prerogative but what the law of the land allows him,—that the king, for the prevention of offences, may, by proclamation, admonish all his subjects, that they keep the laws and do not offend them, upon punishment to be inflicted by the law, and the neglect of such proclamation aggravates the offence,—and that if an offence be not punishable in the Star Chamber, the prohibition of it by proclamation cannot make it so <sup>6</sup>.”

\* The commons also objected to the practice of borrowing on privy seals; to new monopolies; the High Commission Court;

JAMES I.  
1603—1625.

AUTHORITY OF  
THE SOVEREIGN  
TO ISSUE COMMISSIONS AND PROCLAMATIONS.

The king cannot, by his proclamation, create an offence.

Right of the subject not to be governed, except by the common and statute law.

<sup>5</sup> 6 Hume, 55. King James's Works, 531.

<sup>6</sup> 12 Rep. 31. 2 Inst. 418, 479. Rot. Parl. 5 Henry IV. n. 39. Steph. Law. Corp. 16—26, ed. 1835. 16 Rymer, 107.

<sup>7</sup> 5 Parl. Hist. 241. 1 Hallam's Const. Hist. 445.

JAMES I.  
1603—1625.

Protest of the  
commons against  
undefined princi-  
ples of govern-  
ment.

and particularly against the king's proclamations assuming the character of laws. "Amongst many other points of happiness and freedom," it is said, "which your majesty's subjects of this kingdom have enjoyed under your royal progenitors, kings and queens of this realm, there is none which they have accounted more dear and precious than this, to be guided and governed by the certain rule of the law, which giveth both to the head and members that which of right belongeth to them, and not by any uncertain or arbitrary form of government, which, as it hath proceeded from the original good constitution and temperature of this estate, so hath it been the principal means of upholding the same, in such sort as that their kings have been just, beloved, happy, and glorious, and the kingdom itself peaceable, flourishing, and durable so many ages. And the effect, as well of the contentment that the subjects of this kingdom have taken in this form of government, as also of the love, respect, and duty, which they have, by reason of the same, rendered unto their princes, may appear in this, that they have, as occasion hath required, yielded more extraordinary and voluntary contributions to assist their kings, than the subjects of any other known kingdom whatsoever.

Illegal commis-  
sions.

"Out of this root hath grown the indubitable right of the people of this kingdom not to be made subject to any punishment that shall extend to their lives, lands, bodies, or goods, other than such as are ordained by the common laws of this land, or the statutes made by their common consent in parliament. Nevertheless it is apparent, both that proclamations have been of late years much more frequent than heretofore, and that they are extended, not only to the liberty, but also to the goods, inheritances, and livelihood of men; some of them tending to alter some points of the law, and make a new; other some made, shortly after a session of parliament, for matter directly rejected in the same session; other appointing punishments to be inflicted before lawful trial and conviction; some containing penalties in form of penal statutes; some referring the punishment of offenders to courts of arbitrary discretion, which have laid heavy and grievous censures upon the delinquents; some, as the proclamation for starch, accompanied with letters commanding inquiry to be made against the transgressors at the quarter-sessions; and some vouching former proclamations to countenance and warrant the later,

as by a catalogue here underwritten more particularly appeareth.

“ By reason whereof there is a general fear conceived and spread among your majesty’s people, that proclamations will, by degrees, grow up, and increase to the strength and nature of laws; whereby not only that ancient happiness, freedom, will be much blemished (if not quite taken away), which their ancestors have so long enjoyed; but the same may also (in process of time) bring a new form of arbitrary government upon the realm: and this their fear is the more increased by occasion of certain books lately published, which ascribe a greater power to proclamations than heretofore had been conceived to belong unto them; as also of the care taken to reduce all the proclamations made since your majesty’s new reign into one volume, and to print them in such form as acts of parliament formerly have been, and still are used to be, which seemeth to imply a purpose to give them more reputation and more establishment than heretofore they have had.”

This policy was justified by James upon the principle, that although, by the constitution and policy of the kingdom, proclamations were not of equal force with laws; yet it was a duty incumbent on him, and a power inseparably annexed to the crown, to restrain and prevent such mischiefs and inconveniences as were growing on the state, against which no certain law was extant, and which might tend to the great detriment of the subject, if there should be no remedy provided till the meeting of a parliament; and which prerogative, had been by his progenitors, always used and enjoyed.”

The acknowledged difference between laws and proclamations was, that the authority of the former was perpetual, that of the latter expired with the sovereign who emitted them<sup>10</sup>:—but what the authority could be, which bound the subject, yet was different from the authority of laws, and inferior to it, seems inexplicable.

#### 4. *Taxes cannot be levied without consent of Parliament.*

During this reign, the opposition party in the House of Commons were predominant, and, with their natural appetite

JAMES I.  
1603—1626.

General apprehensions respecting the increase of proclamations.

Policy of issuing proclamations justified by James.

Assumed distinction between laws and proclamations.

Increased influence of the opposition in the commons.

<sup>9</sup> 2 Somers’s Tracts, 162.    <sup>2</sup> State Trials, 519.

<sup>9</sup> 5 Parl. Hist. 250.

<sup>10</sup> Comm. Journ. May 12, 1624.    6 Hume, 52.



JAMES I.  
1603—1625.

Refusal of  
supplies.

for power, adopted every expedient which could augment their influence, and to such an extent, that the king was frequently unable to obtain a supply for immediate exigencies<sup>1</sup>; and they refused a bill sent down to them by the lords, for entailing the crown lands for ever on the king's heirs and successors<sup>2</sup>; neither would they come to any definite arrangement relative to the union of England and Scotland, and which was much desired by the court<sup>3</sup>.

Grants for mo-  
nopolies.

Although James had called in and annulled, of his own accord, all the numerous grants of monopolies which had been given by his predecessor<sup>4</sup>, the exclusive companies still remained, by which almost all the foreign trade, except that to France, was confined to about two hundred citizens of London, who, by combining among themselves, could fix whatever price they pleased both to the exports and imports of the nation; in fact, these monopolies had caused shipping and seamen to decay during the reign of Elizabeth<sup>5</sup>.

The statute Con-  
firmatio Charta-  
rum.

Under the statute, "Confirmatio Chartarum," impositions on merchandise at the ports could no more be levied by the crown, than internal taxes upon landed or moveable property; and the grant of tonnage and poundage for the king's life, which, from the time of Henry V., was made in the first parliament of every reign, was tacitly considered as a compensation to the crown, for its relinquishment of these extortions.

Grant of tonnage  
and poundage.

The parliament, when it first granted poundage to the crown, had fixed no particular rates; the imposition was given as a shilling a pound, or five per cent. on all commodities. It was left to the king himself, and the privy council, aided by the advice of such merchants as they should think proper to consult, to fix the value of goods, and thereby the rates of the customs.

Fixing of new  
rates upon mer-  
chandize.

In 1557, Mary, in order to enhance her revenue, set a duty upon cloths exported beyond seas, and afterwards another upon the importation of French wines. Elizabeth would not release the extortion, but increased it by imposing a duty on

<sup>1</sup> Com. Journ. June 26, 1604.

<sup>2</sup> 5 Parl. Hist. 103.

<sup>3</sup> Com. Journ. April 21, May 1, 1604. 5 Parl. Hist. 91; vide etiam Com. Journ. June 7, 1604. Kennet, 673.

<sup>4</sup> 1 Rushworth, 36. Kennet, 733.

<sup>5</sup> Angley's Happy Future State of England, 123. Com. Journ. May 21, 1604.

<sup>6</sup> 25 Edward I. Vido ante infra, 98.

sweet wines; but it gave rise to no complaint in parliament, and is only alluded to by Bacon, in one of his tracts, as a grievance alleged by the queen's enemies<sup>7</sup>.

The imposition of five per cent. on all commodities, had been settled before the discovery of the West Indies, and was become much inferior to the prices, which almost all commodities bore in every market in Europe, and, consequently, the customs on many goods, though supposed to be five per cent. was in reality much inferior.

The king, therefore, was naturally led to think that rates, which were now plainly false, ought to be corrected<sup>8</sup>; that a valuation of commodities, fixed by one act of the privy council, might be amended by another; that if his right to poundage was inherent in the crown, he should also possess, of himself, the right of correcting its inequalities; if this duty was granted by the people, he should at least support the spirit of the law, by giving a new and greater valuation of all commodities.

James had accordingly imposed a duty of 5s. per cent. on currants, over and above that of 2s. 6d., which was granted by the Statute of Tonnage and Poundage. Bates, a Turkey merchant, having refused payment, an information was exhibited against him in the Exchequer, and judgment was given for the crown.

The speeches of Chief Baron Fleming and of Baron Clark<sup>9</sup>, contain propositions worse than their decision, and subversive of liberty. "The king's power," it was said, "is double,—ordinary and absolute; and these have several laws and ends. That of the ordinary is for the profit of particular subjects, exercised in ordinary courts, and called common law, which cannot be changed in substance without parliament. The king's absolute power is applied to no particular person's benefit, but to the general safety; and this is not directed by the rules of common law, but more properly termed policy and government, varying according to his wisdom, for the common good; and all things done within those rules are lawful. The matter in question is matter of state, to be noted, according to policy, by the king's extraordinary power. All customs (duties so called) are the effects of foreign commerce; but all affairs of commerce, and all treaties with

JAMES I.  
1603—1625.

The principles  
which induced  
the king to  
impose  
any  
poundage.

The information  
against Bates.

Corrupt decisions  
of the judges.

<sup>7</sup> 1 Bacon, 521.

<sup>8</sup> 2 Winwood, 438; vide etiam, 16 Rymer, 602.

<sup>9</sup> Lane's Reports, 22—27.

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1603—1625.

foreign nations, belong to the king's absolute power: he, therefore, who has power over the cause, must have it also over the effect. The sea-ports are the king's gates, which he may open and shut to whom he pleases." This was a most illegal decision, because it made the king superior to the statute law<sup>10</sup>; and the acts of Mary and Elizabeth could not, in a legal sense, be regarded as any authority, although they had been tacitly acquiesced in by the nation.

Book of rates  
under the Great  
Seal.

In consequence of this decision, a book of rates was published, in July, 1608, under the authority of the great seal, but the rates so established were moderate, and every commodity, which might serve for the subsistence of the people, or might be considered as a material of manufactures, were exempted from the new impositions of James<sup>11</sup>; in fact, although commerce had considerably increased in this reign, the customs rose only from 127,000*l.* *per annum* to 190,000*l.*

Freedom of  
speech claimed  
by the commons.

The illegality of these impositions was shown by Hakewill and Yelverton<sup>12</sup>, and when, in 1610, the king had intimated by a message to the commons, and afterwards in a speech, his command not to enter on the subject, they presented a strong remonstrance against this inhibition; claiming "as an ancient, general, and undoubted right of parliament, to debate freely all matters which do properly concern the subject; which freedom of debate being once foreclosed, the essence of the liberty of parliament is withal dissolved. For the judgment given by the exchequer, they take not on them to review it, but desire to know the reasons whereon it was grounded; especially as it was generally apprehended that the reasons of that judgment extended much farther, even to the utter ruin of the ancient liberty of this kingdom, and of the subjects' right of property in their lands or goods<sup>13</sup>."

"The policy and constitution of this your kingdom appropriates unto the kings of this realm, with the assent of the parliament, as well the sovereign power of making laws, as that of taxing, or imposing upon the subjects' goods or merchandises, as may not, without their consents, be altered or changed.

"This is the cause that the people of this kingdom, as they ever showed themselves faithful and loving to their kings, and ready to aid them in all their just occasions, with voluntary con-

And that taxes  
cannot be levied  
without consent  
of parliament.

<sup>10</sup> 2 State Trials, 371.

<sup>11</sup> Sir John Davis' Question concerning Impositions.

<sup>12</sup> 2 State Trials, 407.

<sup>13</sup> Com. Journ. May 23, 1610.

tributions; so have they been ever careful to preserve their own liberties and rights, when any thing hath been done to prejudice or impeach the same. And therefore when their princes, occasioned either by their wars or their over great bounty, or by any other necessity, have, without consent of parliament, set impositions, either within the land, or upon commodities, either exported or imported by the merchants, they have, in open parliament complained of it, in that it was done without their consents; and thereupon never failed to obtain a speedy and full redress, without any claim made by the kings, of any power or prerogative in that point. And though the law of property be original, and carefully preserved by the common laws of this realm, which are as ancient as the kingdom itself; yet these famous kings, for the better contentment and assurance of their loving subjects, agreed, that this old fundamental right should be further declared and established by Act of Parliament. Wherein it is provided, that no such charges should ever be laid upon the people, without their common consent, as may appear by sundry records of former times.

“We, therefore, your majesty’s most humble commons assembled in parliament, following the example of this worthy case of our ancestors, and out of a duty to those for whom we serve, finding that your majesty, without advice or consent of parliament, hath lately, in time of peace, set both greater impositions, and far more in number, than any of your noble ancestors did ever in time of war, have, with all humility, presumed to present this most just and necessary petition unto your majesty, that all impositions set without the assent of parliament may be quite abolished and taken away; and that your majesty, in imitation likewise of your noble progenitors, will be pleased that a law be made, during this session of parliament, to declare that all impositions set, or to be set, upon your people, their goods or merchandises, save only by common consent in parliament, are and shall be void<sup>14</sup>.”

The commons then proceeded to pass a bill taking away impositions; but which was rejected by the lords.

After the dissolution of parliament in 1610, the king, in order to obtain money, adopted the usual expedient, namely, “loans;” but he was refused accommodation by the merchants<sup>15</sup>.

JAMES I.  
1603—1625.

Protest against  
taxation by the  
crown.

Bill taking away  
impositions re-  
jected by the  
lords.  
Loans refused.

<sup>14</sup> 2 Somers' Tracts, 159.

<sup>15</sup> 3 Carte, 805,

JAMES I.  
1603—1625.

Sale of honours.

The crown also resorted to the sale of honours, and sold several peerages for considerable sums, and created the order of "Baronets," who paid 1095*l.* each for their patents; but, although their number was intended to be two hundred, ninety-three patents were only sold in the first six years<sup>16</sup>. Each rank of nobility had its affixed price<sup>17</sup>;—privy seals were circulated to the amount of 200,000*l.*;—benevolences were exacted to the amount of 52,000*l.*<sup>18</sup>;—and some monopolies of no great value were created. But as these and other exactions did not suffice for the king's expenditure, he was necessitated to call another parliament,—Bacon having assured him, matters should be so arranged as to secure a court majority; if the commons were granted some favours, and that irritating speeches were avoided.

Undertakers.

The commons, when assembled, in 1614, discovered alarm, on account of the rumour that the "Undertakers" had secured a court majority<sup>19</sup>; but so little skill had "Bacon" and his emissaries manifested, that the court were in a very large minority.

Ill-temper of the commons.

Instead of entering upon the business of supply, as urged by the king, who made them several liberal offers of grace<sup>20</sup>, they discussed the king's authority of levying new customs and impositions, by the mere authority of his prerogative,—and ultimately passed a resolution against the king's right of imposition<sup>21</sup>.

The commons manifested their discontented feelings upon various occasions<sup>22</sup>, and when the king sent a message soliciting a supply, the House voted they would first proceed with the business of impositions, and postpone supply till their grievances should be redressed<sup>23</sup>.—upon which the House was dissolved without having passed a single bill<sup>24</sup>.

Commital of members.

The king was so incensed at the conduct of some of the members, that, adopting the tyrannical principles of the Plan-

<sup>16</sup> 6 Lingard, 144. It was promised in the patents that no new title of honour should be ever created between barons and baronets, and that when the number of two hundred had been filled up, no more should ever afterwards be added, (2 Somers' Tracts, 254.)

<sup>17</sup> Franklyn, 11, 33.

<sup>18</sup> Idem. 10.

<sup>19</sup> 5 Parl. Hist. 286. Kennet, 696. Com. Journ. April 12; May 2, 1614. Franklyn, 48.

<sup>20</sup> Com. Journ. April 11, 1614.

<sup>21</sup> Com. Journ. April 18, May 5, 12, 16, 1614.

<sup>22</sup> Lords' Journ. May 31. Com. Journ. May 25, 26, 1614. 4 Carte, 19, 20, 23. 1 Bacon, 695.

<sup>23</sup> Com. Journ. June 3, 1614.

<sup>24</sup> 1 Hallam's Const. Hist. 465.

tagenets and Tudors, he consigned them to gaol<sup>25</sup>; but the people and parliament, without abandoning for ever all their liberties and privileges, could acquiesce in none of these precedents, how ancient and frequent soever. If the authority of these precedents were admitted, the utmost that could be inferred is, that the constitution of England was, at that time, an inconsistent fabric, whose jarring and discordant parts must soon destroy each other, and from the dissolution of the old, beget some new form of civil government more uniform and consistent<sup>26</sup>.

The proclamation which James had issued, in 1604, relative to the parliamentary elections, was equivalent to law, and an encroachment on the privileges of the commons;—and the question immediately arose upon the return of a member for the county of Buckingham,—whether the members of the House of Commons were to be the nominees of the crown, or the representatives of the nation.

Sir Francis Goodwin, an “outlaw,” had been chosen member for the county of Bucks, and his return was made into Chancery. The chancellor, under the king’s proclamation, vacated his seat, and directed the sheriff to make another return, when Sir Francis Fortescue was chosen: but the House reversed the chancellor’s orders, and restored Sir Francis to his seat.

At the king’s suggestion, the lords desired a conference on the subject; which was refused by the commons, as the question entirely regarded their own privileges<sup>27</sup>. But they made a remonstrance to the king by the mouth of their speaker, in which they maintained, that though the returns were by form made into Chancery, yet the sole right of judging with regard to elections belonged to the House itself, not to the chancellor<sup>28</sup>.

The king, as “an absolute sovereign, and because all their privileges were derived from his grant, and hoping that they would not turn him against them<sup>29</sup>,” commanded a conference between the House and the judges, whose corrupt services had been secured in favour of the crown.

This message astonished the House; but at last one stood up and said, “The prince’s command is like a thunderbolt;

JAMES I.  
1603—1625.

PARLIAMENTARY  
ELECTIVE FRAN-  
CHISE.

The chancellor  
issues an election  
writ in compli-  
ance with the  
royal proclama-  
tion.

Remonstrance  
by the commons.

The king, as an  
absolute sove-  
reign, commands  
a conference  
with the judges.

<sup>25</sup> Kennet, 696. Camden’s Annals of James I. (in 2 Kennet, 643).

<sup>26</sup> 6 Hume, 74. 6 Lingard, 176, 177.

<sup>27</sup> Com. Journ. March 26, 1604; vide ante infra, 316.

<sup>28</sup> Com. Journ. April 3, 1604. <sup>29</sup> Com. Journ. March 29, April 5, 1604.

JAMES I.  
1603—1625.

his command upon our allegiance like the roaring of a lion. To his command there is no contradiction; but how or in what manner we should now proceed to perform obedience, that will be the question<sup>30</sup>."

The consequences of the power assumed by the chancellor.

The commons saw the consequences of that power which had been assumed by the chancellor, and to which their predecessors had, in some instances, blindly submitted. "By this course," said a member, "the free election of the counties is taken away, and none shall be chosen, but such as shall please the king and council. Let us, therefore, with fortitude, understanding, and sincerity, seek to maintain our privilege. This cannot be construed any contempt in us, but merely a maintenance of our common rights, which our ancestors have left us, and which it is just and fit for us to transmit to our posterity<sup>31</sup>." Another said, "This may be called a quo warranto to seize all our liberties<sup>32</sup>." "A chancellor," added a third, "by this course, may call a parliament consisting of what persons he pleases. Any suggestion, by any person, may be the cause of sending a new writ. It is come to this plain question,—whether the chancery or parliament ought to have authority<sup>33</sup>?"

Parliamentary committee appointed to confer with the judges.

The respect of the commons to the crown was such, that a committee was appointed to confer with the judges before the king in council; but the question appearing doubtful to the king, he proposed that the elections of Goodwin and Fortescue should be set aside, and a new writ be issued by warrant of the House,—to which proposition the commons yielded acquiescence,—and no subsequent attempt has been made to dispute the exclusive jurisdiction of the House<sup>34</sup>.

"A Form of Apology and Satisfaction to be delivered to his Majesty."

The disputes respecting "privilege" became, in 1604, so vehement, that the commons prepared a vindication of themselves, entitled, "A Form of Apology and Satisfaction to be delivered to his Majesty," and in which they state,—1. That their privileges and liberties are their right and inheritance, no less than their very lands and goods. 2. That they cannot be withheld from them, denied, or impaired, but with apparent wrong to the whole state of the realm. 3. That their making request, at the beginning of a parliament, to enjoy their privi-

<sup>30</sup> Com. Journ. April 5, 1604.

<sup>31</sup> Com. Journ. March 30, 1604.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid. 6 Hume, 19.

<sup>34</sup> Com. Journ. March 22, 1603. 3 Carte, 730. Parl. Hist. N. E. 997. Cecil in Winwood's Mem. ii. 18.

lege, is only an act of manners, and does not weaken their right. 4. That their House is a court of record, and has been ever so esteemed. 5. That there is not the highest standing court in this land that ought to enter into competition, either for dignity or authority, with this high court of parliament, which, with his majesty's royal assent, gives law to other courts; but from other courts receives neither laws nor orders. 6. That the House of Commons is the sole proper judge of return of all such writs, and the election of all such members as belong to it, without which the freedom of election were not entire."

JAMES I.  
1603—1625.

They aver that in this session the privileges of the House had been more universally and dangerously impugned than ever, as they suppose, since the beginnings of parliaments; that in regard to the late queen's sex and age, and much more upon care to avoid all trouble, which by wicked practice might have been drawn to impeach the quiet of his majesty's right in the succession, those actions were then passed over which they hoped in succeeding times to redress and rectify; whereas, on the contrary, in this parliament, not privileges, but the whole freedom of the parliament and realm, had been hewed from them. "What cause," they proceed, "we, your poor commons, have to watch over our privileges, is manifest in itself to all men. The prerogatives of princes may easily and do daily grow; the privileges of the subject are for the most part at an everlasting stand; they may be by good providence and care preserved, but being once lost, are not recovered but with much disquiet."

Encroachments  
made upon the  
privileges of the  
commons by  
Elizabeth.

Allusion was then made to Goodwin's election and Shirley's arrest<sup>35</sup>. "We thought not," speaking of the first, "that the judges' opinion, which yet in due place we greatly reverence, being delivered what the common law was, which extends only to inferior and standing courts, ought to bring any prejudice to this high court of parliament, whose power, being above the law, is not founded on the common law, but have their rights and privileges peculiar to themselves."

Goodwin's elec-  
tion and  
Shirley's arrest.

They also vindicated their endeavours to obtain redress of religious and public grievances: "Your majesty would be misinformed, if any man should deliver that the kings of England have any absolute power in themselves, either to alter religion, which God defend should be in the power of any mortal man

The king not ac-  
knowledgeed as  
an absolute sove-  
reign.

<sup>35</sup> 1 Hallam's Const. Hist. 416—417.



JAMES I.  
1603—1625.

Privilege of  
members from  
arrest for debt.

Case of Sir  
Thomas Shirley.

POWERS OF COM-  
MITMENT BY THE  
HOUSE OF COM-  
MONS.

The House of  
Commons a court  
of judicature,  
having a power  
of judicature.

Powers of com-  
mitment by the  
commons, are  
those which be-  
long to all courts  
of judicature.

whatsoever, or to make any laws concerning the same, otherwise than as in temporal causes, by consent of parliament. We have, and shall at all times by our oaths acknowledge, that your majesty is sovereign lord and supreme governor in both<sup>36</sup>."

The first legislative recognition of the privilege of members from arrest for debt, occurs in this reign, and which originated under the following circumstances.

Sir Thomas Shirley, a member, had been arrested for debt before the meeting of the House, and when the House assembled, the warden refused to release him; upon which, conceiving their own authority insufficient to enforce the release, the "vice-chamberlain," according to a memorandum in the Journals, "was privately instructed to go to the king, and humbly desire that he would be pleased to command the warden, on his allegiance, to deliver up Sir Thomas; not as petitioned for by the House, but as if himself thought it fit, out of his own gracious judgment<sup>37</sup>,"—and with which request the king complied.

The warden's apprehending an action for the escape, was productive of Stat. 1 James I. c. 13, which empowers the creditor to sue out a new execution, against any one who shall be delivered by virtue of his privilege of parliament, after that shall have expired, and discharges from liability those, out of whose custody such persons shall be delivered<sup>38</sup>; and it is under this statute that the right of commitment by vote of the House can be justified.

The House of Commons has not only a legislative character and authority, but is also a court of judicature, having power of judicature<sup>39</sup>.

The powers of commitment which the House of Commons possess, are those which belong to all courts of judicature,—attachment for contempt, and in the exercise of defining what is a contempt of their authority, they are in all cases absolute and exclusive judges, and from whose sentence there is no appellate jurisdiction: under such circumstances, it is impossible to define the precise boundaries of a contempt of the House of Commons; because a contempt cannot be defined *à priori*, the law being applied according to the necessity of the occasion.

<sup>36</sup> Parl. Hist. N. E. 1030, from Petyt's Jus Parliamentarium. 1 Hallam's Const. Hist. 418.

<sup>37</sup> Com. Journ. May 27, 1604, et seq. Parl. Hist. N. E. 1028. Carte, 734.

<sup>38</sup> 1 Lat Boderie, 81. <sup>39</sup> 4 Inst. 23.

When the House of Commons adjudge anything to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment, in consequence, is an execution; and no court can discharge or bail a person that is in execution by judgment of another court.

It is, therefore, the consequent, that the House of Commons, having authority to commit, and that commitment being in execution, there is no other court that can interpose, because there is no recognised judicial tribunal, which is a court of appeal from a decision of the House of Commons.

Although the courts of common law cannot judge of privilege contrary to the judgment of the House of Commons, yet they are judges of privilege of parliament incidentally, upon this principle that, when an action is brought at common law, judgment must be given one way or another; and where the common law courts have decided upon questions of "privilege," they have done so, when such questions have not been previously decided upon by the House of Commons:—but, under such circumstances, the court does not over-rule the authority or judgment of the exclusive jurisdiction of the commons.

It has been assumed that the privilege of the House of Commons to commit, stands upon no legislative authority, but Lord *Ellenborough*, C. J.<sup>40</sup>, thus expressed himself on this question:—"I come with more satisfaction to an authority which cannot be gainsayed or questioned,—to the legislative recognition of a power in either House of Parliament to punish by imprisonment; for that I think is virtually to be understood from Stat. 1 James I. c. 13. But before I observe upon that statute, I will shortly advert to a prior act of 4 Henry VIII., made in the case of a Mr. Strode, who was imprisoned for something he had done in parliament; and by which it was enacted, that all suits, accusations, condemnations, executions, fines, amerciaments, punishments, corrections, grants, charges, or impositions put or had, or hereafter to be put or had unto or upon the said R. Strode, and to every other person or persons afore specified in that parliament, or that of any parliament that shall be, for any bill, speaking, reasoning, or declaring of any matter concerning the parliament to be commenced and treated, should be utterly void and of none

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When the commons adjudge anything to be a contempt, their adjudication is a conviction.

Courts of common law, judges of privilege of parliament incidentally.

The powers of the commons to commit, recognised by the legislature.

Stat. 1 James I. c. 13.

Stat. 4 Henry VIII. c. 8.

<sup>40</sup> *Burdett v. Abbot*, 14 East, 142—145.

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effect.' I own I agree with the cogent reasons given by Sir Robert Atkyns, (p. 56<sup>41</sup>), that this is to be considered as a general act, notwithstanding the opinion given to the contrary in the case of Mr. Holles<sup>42</sup>, 3 Charles I. This act, however, only relates to the personal immunity and protection of the members themselves, for acts done in parliament or concerning the same.

Recital of  
Stat. 1 James I.  
c. 13.

"Then comes Stat. 1 James I. c. 13, which, after reciting, that 'heretofore doubt had been made if any person, being arrested in execution and by *privilege of either of the Houses of Parliament set at liberty*, whether the party at whose suit such execution was pursued, be for ever after barred and disabled to sue forth a new writ of execution in that case,' (which shows very clearly, that parliament had been in the habit of setting aside or superseding such executions :) for avoiding all further doubt and trouble which in like cases may hereafter ensue, *enacts*, 'that the party at whose suit such writ of execution was pursued, his executors, &c., *after such time as the privilege of that session of parliament*, in which such privilege shall be so granted, *shall cease*, may sue forth and execute a *new writ or writs of execution*,' &c. Is not this an ample recognition of the prior exercise of an authority by the Houses of Parliament to liberate persons entitled to privilege, who were in execution? this statute enacting, however, at the same time, that it should not be an answer to the further charging him in execution by his creditor, that he had once been taken in execution.

Writ of execution may issue, when privilege of parliament ceases.

No person to be prosecuted for releasing one, having privilege of parliament.

"The statute then provides, 'that from thenceforth no sheriff, bailiff, or other officer, from whose arrest or custody any such *person* so arrested in execution shall be *delivered by any such privilege*, shall be charged or chargeable with or by any action whatsoever, for delivering out of execution any such *privileged person so as is aforesaid by such privilege of parliament set at liberty*; any law, custom, or privilege heretofore to the contrary notwithstanding.'

Statute not to diminish any punishment to be hereafter inflicted by parliament.

"And then follows this proviso;—'Provided always, that this act, or anything therein contained, shall not extend to the *diminishing of any punishment to be hereafter by censure in parliament inflicted* upon any person which shall hereafter make or procure to be made any such arrest as aforesaid.'

<sup>41</sup> Vide etiam 4 Inst. 9.

<sup>42</sup> 7 State Trials, 249.

Now, by *inflicting censure*, the power of doing which was thus saved to the Houses of Parliament, as they had before been accustomed to exercise it, must be meant, not a mere crimination or reproof in *words only*, but the substantial *infliction* of positive *punishment* by parliament upon the offender.

“This act, indeed, applies in terms only to the particular case of arrests; but no one can reason so weakly as to suppose, or argue so narrowly as to say, that the power of the Houses of Parliament to inflict punishment existed, and had been exercised, only in that particular case. I have mentioned this instance, not from the necessity of the thing in so plain a case, but because it has been thrown out very confidently, that the privilege of the House of Commons stood upon no parliamentary recognition or authority whatsoever: here, however, is a direct parliamentary recognition of their right to inflict punishment by censure in parliament in the one case that is specifically mentioned, and it virtually ratifies what had been antecedently done by the House in the way of punishment, of which the usual mode appears to have been by imprisonment.”

The commons have for a lengthened period asserted and exercised the power and authority of summoning before them any commoner, and of compelling his attendance: and every branch of the civil authority of the government is bound (when required) to be aiding and assisting to carry into execution the warrants and orders of the House.

In 1675, the House of Commons resolved, “ ’Tis not against the king’s dignity for the House of Commons to punish, by imprisonment, a commoner that is guilty of violating their privileges, that being according to the known laws and custom of parliament, and the right of their privileges, declared by the king’s royal predecessors in former parliaments, and by himself in this.”

Where persons who, having been committed by order of the House, have been discharged out of custody without their warrant;—or where those entitled to “privilege” have been impleaded in the courts of justice;—or prosecuted before such courts for words or actions spoken or done under the protection of the House;—or by accusations tending to call in question before such courts, the words or actions so spoken or done, under false or pretended denominations of offences, not entitled to “privilege,”—the “commons” have vindicated their

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Parliamentary recognition of the right of the commons to inflict punishment.

The commons possess the authority of summoning any commoner before them.

Resolution of the commons to punish breaches of privilege by imprisonment.

Cases in which the commons have vindicated their rights of privilege.

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Mode in which  
the commons  
have enforced  
their rights of  
privilege.

Cases where the  
execution of the  
orders of the  
House has been  
obstructed.

rights under such circumstances:—by taking again into custody those persons who were discharged without their order<sup>43</sup>;—by directing the speaker to write letters to the justices of assize, and other judges, to stay proceedings<sup>44</sup>;—by resolutions of the House, that the suits and actions commenced and carried on in these cases should be discontinued and annulled, and should be deemed violations of its privileges<sup>45</sup>;—and by committing those judges who have proceeded to the trial of, or pronounced sentence upon, persons entitled to “privilege,” for words or actions spoken or done under the protection of “privilege<sup>46</sup>.”

Where the execution of the orders of the House has been obstructed, by the absconding of the parties summoned;—by open resistance to the officers of the House;—and by riots and tumults;—by the refusal of civil officers to assist the serjeants or messengers of the commons, or to release persons entitled to “privilege” when detained in their custody,—the commons have supported their privileges, by addressing the crown to issue proclamations for the apprehension of those persons who

<sup>43</sup> Pemberton and others, June 2, 1675, Journ. ix. 351; Duncombe, March 22, 1697, Journ. xii. 174, when the House resolved, “That no person committed by this House can, during the same session, be discharged by any other authority whatsoever; Charles Duncombe having been committed by order of this House, and afterwards discharged by the order of the House of Lords, without the consent of this House, it was resolved, that the said Charles Duncombe be taken into the custody of the serjeant-at-arms attending this House.”—Rep. Publication of Printed Papers, May 8, 1837.

<sup>44</sup> Strickland, March 19, 1605, Journ. i. 287; Potts, Feb. 2, 1606, Journ. i. 331; Harrison, Feb. 26 & 27, 1606, for stay of trial, as in other like cases has been usual, Journ. i. 342, 343; Sir R. Gargrave, Sir W. Kingswell, *codem die et loco*; Bond, Feb. 28, 1606, Journ. i. 345; Hyam, March 5, 1606, Journ. i. 349; Powlett, May 5, 1607, Journ. i. 369; Bullingham, May 13, 1607, Journ. i. 373; Bowes, May 20, 1607, Journ. i. 375; Johnson, June 10, 1607, Journ. i. 381; Stone, June 20, 1607, Journ. i. 386; Pellham, May 2, 1610, Journ. i. 423; Sanders, May 18 & 21, 1610, Journ. i. 429; “General motion about letters to be written to the justices of assize, referred to the committee of privileges, report this resolution; resolved, That the former course of writing letters to the justices of assize, according to precedents; and, if required, a warrant for inhibition to the party,” March 3, 1620, Journ. i. 537; Lord Bulkley, April 28, 1691, Journ. x. 537.—Rep. Publication of Printed Papers, May 8, 1837.

<sup>45</sup> Sir Robert Howard, Feb. 17, 1625, Journ. i. 820; Sir William Williams, Feb. 7, 1688, Journ. x. 21, 146, 215; Hollis and others, July 6, 1641, Journ. ii. 202, 203; Jay and Topham, June 4, 1689, Journ. x. 64, 210, 213, 227; Elford, April 13 & 14, 1716, Journ. xviii. 420; and on April 16, the clerk of the peace was ordered to erase the name at the table.—Rep. Publication of Printed Papers, May 8, 1837.

<sup>46</sup> Case of the five members, Jan. 18, 1641, Journ. ii. 377; Jay and Topham, *ut ante*.

thus stood in contempt of the House<sup>47</sup>;—by renewing their orders against such persons, and committing them in a subsequent session of parliament<sup>48</sup>;—by orders to mayors, bailiffs, and sheriffs, to assist their serjeant or messenger for the apprehending of such persons; or to their serjeant to call on the sheriffs of Middlesex, and the sheriffs of other counties, and all other magistrates or persons, for their assistance<sup>49</sup>;—by committing, for “breach of privilege,” those officers of the peace who have refused assistance to their serjeant when so called on<sup>50</sup>;—by imprisoning those who refused to release persons entitled to “privilege,” according to the nature of the offence, and compelling the civil authority to carry into execution the warrants of the House<sup>51</sup>.

The recognised right of the House of Commons to commit, is exemplified by the facts, that there is no instance “*in their Journals*” of any court or magistrate having presumed to commit, during the sitting of parliament, an officer of the House, for executing the orders of the House:—and there is no precedent of the commons having suffered any person com-

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<sup>47</sup> Sir Giles Mompesson, Feb. 28 & March 3, 1620, Journ. i. 537; Windebank, Dec. 10, 1640, Journ. ii. 43; Sir Basil Brook, April 24, 1641, Journ. ii. 127; Sir John Lloyd, &c., Jan. 8, 1680, Journ. ix. 702; Brent, Feb. 22, 1688, Journ. x. 32; Sir Adam Blair, June 15, 1689, Journ. x. 182; Standish, March 12, 1694, Journ. xi. 266; Grasecomb, Nov. 30, 1696, Journ. xi. 602; Soranzie, April 11, 1700, Journ. xiii. 321; Jeffreys, Addy, and Clifton, March 25 & 26, 1701, Journ. xiii. 427, 436, 437; Colepeper and others, March 28 & April 2, 1702, Journ. xiii. 826; Tutching, &c., printers, Feb. 14, 1703, Journ. xiv. 336; Rioters, in Sacheverell's case, March 2, 4, & 6, 1709, Journ. xvi. 343, 346; Rebels, Feb. 4 & 6, 1715, Journ. xviii. 368; Wilkinson, June 9 & July 4, 1721, Journ. xix. 585; Leverland, March 6, 1746, Journ. xxv. 313; A. Murray, Nov. 26, 1751, Journ. xxvi. 309; Reynolds, Feb. 11, 12, 15, 16, & 18, 1768, Journ. xxxi. 603, 606, 610, 612, 618.

<sup>48</sup> Harvey and Martin, April 22, 1713, Journ. xvii. 298; Inglesfield, Jan. 29, 1725, Journ. xx. 549; Phillips and Barnes, Jan. 22, 1733, Journ. xxii. 210; A. Murray, *ut ante*.

<sup>49</sup> Ratcliffe, Nov. 14, 1640, Journ. ii. 29; Sir Basil Brook, Jan. 11 & 25, 1641, Journ. ii. 371; Nabbs and Thompson, Dec. 21, 1660, Journ. viii. 222; Dudley, Jan. 24, 1670, Journ. ix. 193; Topham, June 4, 1675, P. M. Journ. ix. 353.

<sup>50</sup> Hastings and Crook, May 19, 1675, Journ. ix. 341; Topham, *ut ante*; Blythe, April 7, 1679, Journ. ix. 587; Owen, March 28, 1702, Journ. xiii. 826.—Rep. Publication of Printed Papers, May 8, 1837.

<sup>51</sup> Ferrers' case, *Cromp. fo. 9, 10*; Stannan, 6 Edwd. VI. Journ. i. 18; Boswell, 2 & 3 P. & M. Nov. 20, 1555, Journ. i. 44; Corbet, 5 & 6 P. & M. Nov. 10, 1557, Journ. i. 51; Six Servants of Sir H. Jones, Feb. 12, 1562, Journ. i. 65; W. Jones, Oct. 29, 1566, Journ. i. 75; Sir J. Shirley, March 22, 1608, Journ. i. 169; Sterling, 1666, Journ. viii. 335; Res. June 4, 1675, Journ. ix. 354; Salusbury, April 1, 1697, Journ. xi. 765; Jan. 3, 1703, Journ. xiv. 269; Tutchin, How, & Brag, Mist, May 27, 1721, Journ. xix. 562.

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The grounds upon which the courts of common law have refused their interposition in cases of parliamentary privilege.

Supposed ignorance of the common law judges respecting the law of parliament.—  
Queen v. Paty.

Thorpe's case, 31  
& 32 Henry VI.

Judges ought not to give any opinion of a matter of parliament.

4 Inst. 15, 50.

13 Rep. 63.

Illustration of  
the restricted

mitted by their order, to be discharged during the same session, by any other authority, without again committing such person.

The courts of common law have hitherto refused this interposition, where persons have been imprisoned by the House of Commons, upon two grounds; *first*, their supposed ignorance of the law of parliament; and, *secondly*, that the law has entrusted every supreme court with the absolute power of judging of its own contempts, in the last resort.

With respect to the law of parliament, Mr. Justice Powys, in the Queen v. Paty, observed, "The House of Commons is a great court, and all things done by them is to be intended to have been *rite acta*. They are chosen by ourselves, and are our trustees, and it cannot be supposed, nor ought to be presumed, that they will exceed their bounds, or do anything amiss. It would be unreasonable to put the judges upon determining the privileges of the House of Commons, of which they have no account, nor any footsteps in their books;" and Lord Ellenborough always recognised the principle, that courts of law possessed no direct jurisdiction in questions of parliamentary privilege.

These decisions are in perfect accordance with the early authorities:—thus, in the reign of Henry VI., the lords entertaining some doubt, called upon the judges to give their opinion upon a question of "parliamentary privilege," which they, after deliberation, declined to do, stating, "that they ought not to answer that question; for it hath not been used aforetime that the justices should *in any wise* determine the privilege of the high court of parliament; for it is so high and mighty in its nature, that it may make law, and that that is law, it may make no law."

Lord Coke advocates a similar doctrine, thus,—“The judges ought not to give any opinion of a matter of parliament, because it is not to be decided by the common law, but *secundum legem et consuetudinem parliamenti*; and so the judges in divers parliaments have confessed.” “It doth not belong to the judges, as hath been said,” (*i. e.* as he himself had already said,) “to judge of any law, custom, or privilege of parliament.” “The privilege, or order, or custom of parliament, either of the Upper House or of the House of Commons, belongs to the determination or decision *only* of the court of parliament.”

But the restricted power of the common law courts, in

questions of "privilege" is forcibly exemplified in the case of *Jay v. Topham*<sup>52</sup>, which was an action brought against the serjeant-at-arms for an assault and false imprisonment in executing a warrant granted by the speaker against the plaintiff, for a breach of privilege; the defendant pleaded to the jurisdiction of the court; but which plea was overruled. The Lord Chief Justice Pemberton and Sir T. Jones, two of the judges who pronounced the decision, were brought to the bar, for a breach of "privilege." The former distinctly affirmed that an order of the House was pleadable *in bar* to any action for an arrest under it, and also that the House was a superior court of a higher nature than the King's Bench, and of greater authority, and that the King's Bench had nothing to do to inspect the actions of the House; and disclaimed having questioned the legality of the order or the power, but only whether the party had properly pursued the order; and Sir T. Jones likewise disclaimed the court's having questioned the authority of the House, and said, "if the defendant had produced a copy of the Journal, that would have been sufficient; no judge would have been so silly, or imprudent, at least, to have said, that had not been a good and sufficient authority." Both judges disavowed any intention to decide upon privilege, and professed to have overruled the plea for *informality*; and Lord Chief Justice Pemberton expressly stated that, "for anything *transacted in that House*, no other court had any jurisdiction to hear and determine it."

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powers of the common law courts in questions of privilege. *Jay v. Topham*.

The House of Commons is a court of superior authority to that of the King's Bench.

The case of the Queen *v. Paty* and others<sup>53</sup> was decided upon the foregoing principles, the question being whether or not the House of Commons had acted correctly in determining, that an action brought against a returning officer for having rejected votes at an election was a breach of privilege. The House having committed those who were concerned in bringing the action, they sued out writs of habeas corpus; to which the warrant of commitment issued by the speaker, was returned, stating, "that by virtue of an order of the House of Commons, &c., these are to require you forthwith, upon sight thereof, to receive into your custody the body of John Paty, who, as it appears to the House of Commons, is *guilty of commencing and prosecuting an action at common law* against the late constables of Aylesbury, for not allowing his vote in the election of members to serve in parliament; contrary to

When the commons decree anything to be a contempt, the courts of common law are bound to give credence to that determination,—*Queen v. Paty*.

<sup>52</sup> 12 State Trials, 821, A.D. 1639.

<sup>53</sup> 2 Lord Raym. 1105.



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the declaration, in high contempt of the jurisdiction, and in breach of the known privileges of this House," &c. The question, in effect, was, whether this warrant, upon the face of it, stated a legal cause of commitment. Lord Holt certainly was of opinion that it did not; for that the prosecuting of the action being in itself a legal act, and the right of the subject, could not be a breach of privilege; and consequently that the party ought to be discharged. But the eleven other judges were of a different opinion; and, as Mr. Justice Blackstone said, in Crosby's case, "We must be guided by the eleven, and not by the single one." The eleven judges were of opinion, that the court had nothing to do with the consideration, whether or not it was a contempt of the House of Commons; the House having determined it to be so, they were bound to give credence to that determination.

Courts of common law cannot judge of privilege, because it is decided by the law of parliament.

Mr. Justice John Powell<sup>54</sup>, also observed, "The court cannot judge of the return; first, because they were committed by another law, and consequently we cannot discharge them by that law by which they were not committed. There is a *lex parliamenti*; for the common law is not the only law in this kingdom; and the House of Commons do not commit men by the common law, but by the law of parliament. The House of Lords have a power of judicature by the common law upon writs of error, but they cannot proceed originally in any cause. But they proceed, too, in another manner, in the case of their own privileges, and therein the judges do not assist, as they do upon writs of error; and their proceeding, in that case, is by the *lex parliamenti*."

Every supreme court possesses an absolute power of judging of its own contempts,—  
Rex v. Murray.

Various authorities establish that the law has entrusted every supreme court with the absolute power of judging of its own contempts, in the last resort, thus,—

To a writ of habeas corpus which was issued in the case of the King v. Murray<sup>55</sup>, it was returned, "That the prisoner was, by an order of the House of Commons, committed to Newgate, for a high contempt of that House:" and it was moved to bail him under the Habeas Corpus Act, (Stat. 31 Charles II. c. 2.) which it was said is of higher authority than an order of the House of Commons. Wright, J., says; "It appears, upon the return of this habeas corpus, that Mr. Murray is committed to Newgate by the House of Commons, 'for a high and dangerous contempt of the privileges of that House;' and

<sup>54</sup> 2 Lord Raym. 1110.

<sup>55</sup> 1 Wils. 299.

it is now insisted upon at the bar, that this is a bailable case, within the meaning of the Habeas Corpus Act. To this I answer, that it has been determined by all the judges to the contrary; that it never could be the intent of that statute to give a judge at his chambers, or this court, power to judge of the privileges of the House of Commons. The House of Commons is undoubtedly a high court, and it is agreed, on all hands, that they have power to judge of their own privileges; it need not appear to us what the contempt was, *for if it did appear, we could not judge thereof*. Lord Shaftesbury was committed for a contempt of the House; and being brought here by a habeas corpus, the court remanded him. And no case has been cited where ever this court interposed. The House of Commons is superior to this court, in this particular," &c. Dennison, J., says, "In this case we granted the habeas corpus, not knowing what the commitment was for; but now it appears to be for a contempt of the privileges of the House of Commons. What these privileges (of either House,) are, we do not know; nor need they tell us what the contempt was; because we cannot judge of it: for I must call this court inferior to the House of Commons, with respect to judging of their privileges and contempts against them," &c.

So likewise in Brass Crosby's case<sup>56</sup>, the judges declared, "That the court never discharged persons committed, for a contempt, by any supreme court, such as the two houses of parliament, and the courts of Westminster Hall: the law having intrusted to these, the power of judging of their own contempts, in the last resort. If there lay any appeal from them, it would detract from their dignity, and they would cease to be supreme courts<sup>57</sup>."

"Writs of attachment, and commitments for contempts, express no particulars of the contempts; because, if expressed, they could not be examined. And the legislature has affirmed and approved of the process of contempts as established by the common law<sup>58</sup>."

Lord Ellenborough, J.<sup>59</sup>, thus sums up the powers of the House of Commons. "It is made out that the power of the

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The courts of law cannot judge of parliamentary contempt, even where the cause is stated.

No appeal from any supreme court, in cases of contempt.

Brass Crosby's case.

The powers of the commons to commit for contempt summed up by Lord Ellenborough.

<sup>56</sup> 2 Black Rep. 754. 3 Wils. 183. 19 State Trials, 1138.

<sup>57</sup> Paston's Case, 12 Edward IV. Trewyniard's Case, Dyer, 59, B. Chamber's Case, Cro. Car. 163, 579.

<sup>58</sup> Stat. 13 Charles 2, c. 2, s. 4. Stat. 9 and 10 William III. c. 15.

<sup>59</sup> Burdett v. Abbot, 14 East, 158, 151.

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House of Commons to commit for contempt, stands upon the ground of reason and necessity, independent of any positive authorities on the subject: but it is also made out by the evidence of usage and practice, by legislative sanction and recognition, and by the judgments of the courts of law, in a long course of 'well-established precedents and authorities.'

"If there were no precedents upon the subject, no legislative recognition, no practice or opinions in the court of law, recognising such an authority, it would still be essentially necessary for the Houses of Parliament to have it; indeed that they would sink into utter contempt and inefficiency without it. Could it be expected that they should stand high in the estimation and reverence of the people, if, whenever they were insulted, they were obliged to wait the comparatively slow proceedings of the ordinary course of law for redress? That the speaker with his mace should be under the necessity of going before a grand jury to prefer a bill of indictment for the insult offered to the House? They certainly must have the power of self-vindication and self-protection in their own hands; and if there be any authenticity in the recorded precedents of parliament, any force in the recognition of the legislature, and in the decisions of the courts of law, they have such power."

The subject has an inherent right of enjoying whatever liberties the laws have defined, and of resisting any restrictions which are not so authorized.

In an abstract point of view, the following constitutional principles are unquestionable. That, by Stat. 12 and 13 William III. c. 2, the English Constitution has its source alone from "mutual consent," and from that compact the people of England have an inherent right of enjoying whatever liberties the laws have defined, and of resisting any restrictions which are not so authorized,—for the political liberty of the subject is a tranquillity of mind, arising from the opinion each person has of his safety, in not being obliged to yield obedience to any ordinances, except such as are expressly recognised by prescriptive custom, or explained by positive enactment.

The common and statute law have defined the place of jurisdiction, where any question affecting the property or liberty of the subject is to be determined.

That either the common or statute law, has unequivocally defined the place of jurisdiction, where any question affecting the property or liberty of the subject is to be determined, and that the investigation should be in the presence of those, who are recognised as the responsible administrators of the law, publicly discharging their duties through the intervention of a jury, acting under a commission of oyer and terminer, so that

the accused, if convicted, may be punished in accordance with the law, but if released, “eat inde sine die.”

It is therefore an extraordinary anomaly in the English Constitution, that the principles contained in the foregoing decisions, as to the powers of commitment for contempt by the commons, should have ever existed, because, under the cases that have been cited, the House of Commons, during its sittings, is superior to the common and statute law, and the liberty of the subject subordinate to its selfish and tyrannical caprices:—for in the exercise of the process of contempt, the evidence against the accused is given without the sanction of an oath, and, as stated by Mr. Pemberton;—“They are deprived of the assistance of counsel; matters of law are decided by persons wholly ignorant of law: the body which sit in judgment are usually interested in the decision:—and accordingly men have been sent to prison for expressing their opinions on public affairs in the most constitutional manner; others for venturing to assert their undoubted rights to private property; others for bringing actions which the highest tribunals in the country had declared to be maintainable; attorneys and counsel for performing their professional duty; judges for deciding according to law:—in short, there is scarcely any act, however innocent, or however meritorious, which has not at some period been voted into a contempt of one or other House of Parliament, and that the punishments awarded have often been as barbarous as the grounds of complaint have been frivolous<sup>60</sup>:”—in fact, it was by the exercise of this authority, that a base and selfish faction, were enabled at one period of our history, to veil the statues of liberty, and then to perpetrate the foulest of regicides.

But even assuming that this “privilege of contempt” had never been abused by the commons, yet the existence of such undefined powers in a *popular* assembly, where there is *no individual responsibility*, is incompatible with a pure system of constitutional liberty.—because the records of history justify the degrading assertion, that whenever the members of a popular and irresponsible assembly have taken upon themselves the executive or administrative, their proceedings have invariably been so many pitiable satires upon justice and common sense.

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Anomaly in the Constitution, that the commons should possess the privilege of contempt.

Arbitrary process against the accused, in cases of privilege.

Exemplifications of constitutional liberty, as administered by the commons.

Undefined powers, should never be entrusted to a popular assembly, because there is no individual responsibility.

<sup>60</sup> Pemberton on Parl. Privilege, 2nd edit, 98.

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PATENTS OF MONOPOLY, AND  
PARLIAMENTARY  
IMPEACHMENT.

Patents granted  
to Sir Giles Mompesson and Sir  
Francis Michel.

The parliament of 1621, after a "supply" had been voted, proceeded to examine the national grievances,—none of which had been more grievous to the subject than patents of monopoly<sup>61</sup>, including licenses for exclusively carrying on certain trades.

Patents had been granted to Sir Giles Mompesson and Sir Francis Michel for licensing inns and ale-houses, by which they had exacted great sums of money under pretext of these licenses; and when the inn-keepers presumed to continue their business, without satisfying the rapacity of the patentees, they had been severely punished by fine, imprisonment, and vexatious prosecutions.

The same persons had also procured a patent, which they shared with Sir Edward Villiers, brother to Buckingham, for the sole making of gold and silver thread and lace, and had obtained very extraordinary powers for preventing any rivalry in these manufactures. They were armed with authority to search for all goods which might interfere with their patent; and even to punish, at their own will and discretion, the makers, importers, and vendors of such commodities. Many had grievously suffered by this exorbitant jurisdiction; and the lace, which had been manufactured by the patentees, was universally found to be adulterated, and to be composed more of copper than of the precious metals<sup>62</sup>.

Punishment of  
Michel.

The king gave the commons every facility in bringing to justice these offenders,—although the government were equally guilty in conniving at such impositions; upon which Mompesson quitted the country, but Michel was arrested, and the commons voted him incapable of retaining the commission of the peace, and committed him to the Tower.

Commons decide  
they have no  
judicial powers,  
in a case of general  
grievance.

Doubts having subsequently arisen amongst the members, whether the commons possessed these powers of deprivation and committal, Noy and Hakewill were instructed to search for precedents, in order to show how far, and for what offences, their power extended to punish delinquents against the state, as well as those who offended against the House.

In a few days afterwards, the commons came to a vote that "they must join with the lords for punishing Sir Giles Mompesson; it being no offence against our particular House, nor any member of it, but a general grievance"<sup>63</sup>.

<sup>61</sup> 6 Lingard, 178.

<sup>62</sup> 6 Hume, 107, 108.

<sup>63</sup> Debates of Commons in 1621, 103—109, ed. Oxf. 1766.

The commons then requested a conference with the lords, and informed them generally of Mompesson's offence, but did not exhibit any distinct articles at their bar. The lords instituted an inquiry; and having become satisfied of his guilt, sent a message to the commons, that they were ready to pronounce sentence.

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The speaker accordingly, attended by all the House, demanded judgment at the bar, when the lords passed as heavy a sentence as could be awarded for any misdemeanour; to which the king added, "perpetual banishment<sup>64</sup>." But it is clear the sentence of banishment was illegal, the offence of the accused having been only a misdemeanour.

Punishment of  
Mompesson.

The impeachment of *Mompesson* was succeeded by others against his associate *Michel*, for the offence previously detailed; Sir John Bennet, Judge of the Prerogative Court, for corruption in his office; Field, Bishop of Llandaff, for being concerned in a matter of bribery<sup>65</sup>; and Lord Chancellor Bacon, for receiving bribes from suitors in his court, for which he was sentenced to pay a fine of 40,000*l.*, to be imprisoned in the Tower during the king's pleasure, to be for ever incapable of any office, place, or employment, and never again to sit in parliament, or come within the verge of the court<sup>66</sup>.

Michel, Bennet,  
Field, and Bacon  
impeached.

This revival of impeachment is a remarkable event in our constitutional annals. The earliest instance of parliamentary impeachment, or of a solemn accusation of any individual by the commons at the bar of the lords, was that of Lord Latimer in the year 1376. The latest hitherto, was that of the Duke of Suffolk, in 1449. It had fallen into disuse, partly from the loss of that control which the commons had obtained under Richard II. and the Lancastrian kings, and partly from the preference the Tudor princes had given to bills of attainder, or of pains and penalties, when they wished to turn the arm of parliament against an obnoxious subject<sup>67</sup>.

First impeachment  
by the commons.

There is perhaps no case on record which should serve to inspire a jealous distrust of that undefinable and uncontrollable "privilege of parliament," more than that of Floyd; and as

Case of Floyd.  
Mischiefs of the  
uncontrollable  
privileges of par-  
liament.

<sup>64</sup> Lords' Journ. March 26 & 27, 1621. Debates of Commons, 1621, 114, 228, 229. Hacket's Life of Williams, 49, 50. 1 Hallam's Const. Hist. 486, 6 Lingard, 179.

<sup>65</sup> 6 Lingard, 182, 183.

<sup>66</sup> Lords' Journ. March 20, April 17, 24, 30, May 3, 1620.

<sup>67</sup> 1 Hallam's Const. Hist. 487, 488. Vide ante 121, 140.

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a proof of the disregard which popular assemblies entertain for principles of justice, when satiating their reckless appetites for revenge.

It appears one Floyd, a prisoner in the Fleet, a Roman Catholic, had dropped some expressions in private conversation, as if he were pleased with the misfortunes of the Elector Palatine and his wife. At this insignificant circumstance, the rage of the commons hardly knew bounds, and they fixed upon the most degrading punishment they could devise against Floyd.

Judicial powers  
of parliament  
belong to the  
lords.

The next day a message was communicated to them from the king, requesting the commons to consider whether they could sentence one who did not belong to them, nor had offended against the House or any member of it; and whether they could sentence a denying party without the oath of witnesses, referring them to an entry on the Rolls of Parliament of Henry IV., that the judicial power of parliament does not belong to the commons.

The commons excepted to the Parliament Roll of 1 Henry IV., because it was not a statute, and persisted in their first votes. The king then requested them to show precedents to support their claim; but which they were unable to do. The lords requested a conference, and the result was, that the commons relinquished their pretensions in favour of the lords<sup>68</sup>.

Sentence upon  
Floyd.

Floyd, for uttering a few contemptible expressions, was degraded from his gentility, and to be held an infamous person: his testimony not to be received; to ride from the Fleet to Cheapside on horseback, without a saddle, with his face to the horse's tail, and the tail in his hand, and then to stand two hours in the pillory, and to be branded in the forehead with the letter K; to ride four days afterwards in the same manner to Westminster, and then to stand two hours more in the pillory, with words on a paper in his hat showing his offence; to be whipped at the cart's tail from the Fleet to Westminster Hall; to pay a fine of 5000*l.*; and to be a prisoner in Newgate during his life<sup>69</sup>.

In 1624, the constitutional right of the commons to impeach

<sup>68</sup> Com. Journ. May 5, 12, 18, 1621.

<sup>69</sup> Debates of Commons in 1621, 355. 1 Hallam's Const. Hist. 493.

That part of the sentence which related to the whipping was remitted by the king; and to prevent the recurrence of punishment being awarded so

he ministers of the crown, was again recognised in the case of the Earl of Middlesex, Lord Treasurer of England, for bribery and other misdemeanours. These proceedings were conducted by managers on the part of the commons; and the depositions of the witnesses were read by the clerk—*viva voce* examination being dispensed with in political trials.

In consequence of the non-enactment of legislative measures for thirteen years, several statutes of importance were enacted during the session of 1624; the most important of which, was that for abolishing monopolies for the sale of merchandise, or for using any trade<sup>70</sup>. The bill was conceived in such terms as to render it merely declaratory; and all monopolies were condemned, as contrary to law, and to the known liberties of the people. It was there supposed, that every subject of England had an entire power to dispose of his own actions, provided he did no injury to any of his fellow-subjects; and that no prerogative of the king, no power of any magistrate, nothing but the authority alone of laws, could restrain that unlimited freedom.

In 1606, the English merchants having loudly complained of Spanish depredations<sup>71</sup>, the Lower House sent a message to the lords, desiring a conference with them, in order that they should present joint petitions to the king on the subject. The lords took some time to deliberate on this message, because they said the matter was weighty and *rare*.

At the conference which ensued, the Earl of Northampton, one of the lords-managers, stated that the lords could not concur in forwarding the petition to the crown, because the composition of the House of Commons was, in its first foundation, intended merely to be of those, that have their residence and vocation in the places for which they serve, and therefore to have a private and local wisdom according to that compass, and so not fit to examine or determine secrets of state, which depend upon such variety of circumstances; and although he acknowledged that there were divers gentlemen in the House of good capacity and insight into matters of state, yet that was the accident of the person, and not the intention of the

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Commons' right to impeach the ministers of the crown, recognised.

Monopolies condemned, as contrary to law.

Stat. 21 James I. c. 3.

THE COMMONS CLAIM A RIGHT TO INTERFERE IN MATTERS OF GOVERNMENT.

Original right of the House of Commons to examine secrets of state, denied.

disproportionate to the offence, an order was made, that, in future, judgment in the House of Lords should not be pronounced on the same day on which it was voted.—Lords' Journ. May 31, 1621.

<sup>70</sup> Stat 21 James I. c. 3. Vide etiam 3 Inst. 181.

<sup>71</sup> Com. Journ. February 25, 1606.



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place; and things were to be taken in the institution, and not in the practice. The commons seemed to acquiesce in these contemptuous observations<sup>72</sup>, and which were practically true under the House of Tudor.

In 1621, the commons became emboldened from their increased power, and carried their researches into many grievances, which essentially affected the king; and although James was willing to correct the abuses of the executive, he would not submit to have his authority questioned and denied, and prorogued the parliament under pretence of the advanced season.

Defence of the  
Palatine.

Upon its re-assembling, the commons prepared a remonstrance which they intended to carry to the king, in which they entreated his majesty that he would immediately undertake the defence of the Palatine, and maintain it by force of arms; that he would turn his sword against Spain, whose armies and treasures were the chief support of the Roman Catholic interest in Europe; that he would enter into no negotiation for the marriage of his son but with a Protestant princess; that the children of popish recusants should be taken from their parents, and be committed to the care of Protestant teachers and schoolmasters; and that the fines and confiscations, to which the Roman Catholics were by law liable, should be levied with the utmost severity<sup>73</sup>.

War against  
Spain.

Commons re-  
buked by the  
king.

The king, when he heard of this bold and unprecedented remonstrance, wrote a letter to the speaker, sharply rebuking the House for debating matters far beyond their reach or capacity, and he strictly forbade them to meddle with any thing that regarded his government, or deep matters of state, and especially not to touch on his son's marriage with the daughter of Spain, nor to attack the honour of that king, or any other of his friends and confederates.

James claims a  
right to punish  
any misdemeanour  
in parliament.

In order the more to intimidate them, he mentioned the imprisonment of Sir Edwin Sandys; and though he denied that the confinement of that member had been owing to any offence committed in the House, he plainly told them, that he thought himself fully entitled to punish every misdemeanour in parliament, as well during its sitting, as after its dissolution; and that he intended thenceforth to chastise any man

<sup>72</sup> 1 Bacon, 663. Com. Journ. 341. 1 Hallam's Const. Hist. 429.

<sup>73</sup> Franklin, 58, 59. 1 Rushworth, 40, 41. Kennet, 737. 6 Hume, 112, 113.

whose insolent behaviour there should minister occasion of offence<sup>74</sup>.

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The commons, not having to fear the “maledictions” and punishment of an Elizabeth, and secure of popular support, from the bent of the nation towards a war with the Roman Catholics abroad, and the suppression of popery at home, despised the menaces of the crown, and, in a new remonstrance, they confirmed the preceding, and insisted upon a constitutional right to investigate all state affairs<sup>75</sup>.

Commons again remonstrate.

In answer to this remonstrance, the king said it was more like a denunciation of war than an address of dutiful subjects; that their pretension to inquire into all state affairs, without exception, was such a plenipotence as none of their ancestors, even during the reign of the weakest princes, had ever pretended to; that public transactions depended on a complication of views and intelligence, with which they were entirely unacquainted; that they could not better show their wisdom, as well as duty, than by keeping within their proper sphere, and that, in any business which depended on his prerogative, they had no title to interfere with their advice, except when he was pleased to desire it.

Answer of the king, in which parliamentary privilege is treated as precarious.

And concluded his answer with these words:—“And though we cannot allow of your style, in mentioning your ancient and undoubted right and inheritance, but would rather have wished that ye had said, that your privileges were derived from the grace and permission of our ancestors and us (for the most of them grew from precedents, which shews rather a toleration than inheritance); yet we are pleased to give you our royal assurance, that as long as you contain yourselves within the limits of your duty, we will be as careful to maintain and preserve your lawful liberties and privileges as ever any of our predecessors were, nay, as to preserve our own royal prerogative<sup>76</sup>.”

The commons saw their title to every privilege, if not plainly denied, yet considered at least as precarious. It might be forfeited by abuse, and they had already abused it; and after a lengthened debate, the following protestation was entered in their journals<sup>77</sup>:—

“The commons now assembled in parliament, being justly

Protestation of the commons against the assumed rights of the crown.

<sup>74</sup> Franklyn, 60. 1 Rushworth, 43. Kennet, 741. 6 Hume, 114.

<sup>75</sup> Franklyn, 60. 1 Rushworth, 44. Kennet, 741.

<sup>76</sup> Franklyn, 62, 63, 64. 1 Rushworth, 46, 47, et seq. Kennet, 743.

<sup>77</sup> Com. Journ. Dec. 18, 1621.

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The liberties and jurisdictions of parliament, are the ancient inheritance of the subjects of England.

occasioned thereunto, concerning sundry liberties, franchises, privileges, and jurisdictions of parliament, amongst others not herein mentioned, do make this protestation following:—That the liberties, franchises, privileges, and jurisdictions of parliament, are the ancient and undoubted birthright and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the king, state, and the defence of the realm, and of the Church of England, and the making and maintenance of laws, and redress of mischiefs and grievances which daily happen within this realm, are proper subjects and matter of counsel and debate in parliament; and that in the handling and proceeding of those businesses, every member of the House hath, and of right ought to have, freedom of speech to propound, treat, reason, and bring to conclusion, the same; that the commons in parliament have like liberty and freedom to treat of those matters in such order as in their judgments shall seem fittest; and that every such member of the said House hath like freedom from all impeachment, imprisonment, and molestation (other than by the censure of the House itself) for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the parliament, or parliament business; and that, if any of the said members be complained of, and questioned for anything said or done in parliament, the same is to be showed to the king by the advice and assent of all the commons assembled in parliament, before the king give credence to any private information."

Protestation of the commons torn from their journals.

Punishment of the members.

Progress of liberty.

The king, upon hearing of this protestation, sent for the journals of the commons, and, before the council, tore out the protestation<sup>78</sup>. After such proceedings, it was useless to anticipate any amicable arrangement: the parliament was accordingly prorogued, and was then dissolved by proclamation, in which the king made an apology to the public for his conduct<sup>79</sup>, and promised to call another parliament<sup>80</sup>, but sent some of the most obnoxious members to prison, and others to Ireland on business<sup>81</sup>, it being the accustomed prerogative of the crown to employ any man, even without his consent, in any branch of public service.

Notwithstanding these proceedings, the rapid progress of established liberty is forcibly illustrated from the fact that Sir

<sup>78</sup> Com. Journ. Dec. 18, 1621.

<sup>79</sup> Franklyn, 65. 6 Hume, 116.

<sup>80</sup> 17 Rymer, 344. Parl. Hist. Carte, 93.

<sup>81</sup> Franklyn, 66. 1 Rushworth, 55. Mede's Letters, Harl. MSS. 389.

John Saville, a powerful man in the House of Commons, and a zealous opponent of the court, was made comptroller of the household, a privy councillor, and soon after a baron<sup>82</sup>. This is the first instance in the history of England, of any king's advancing a man on account of parliamentary interest, and of opposition to his measures<sup>83</sup>; and the parliamentary events of this period caused men to indulge in political reasonings and inquiries, and to form themselves into parties.

In 1624, another parliament was summoned, in consequence of the rupture with Spain, and the affairs of the Palatinate; and the king, in his opening speech, condescended to ask the advice of parliament, which he had always rejected, with regard to the conduct of so important an affair as his son's marriage<sup>84</sup>.

The commons voted three subsidies, and three-fifteenths (being a sum less than 300,000*l.*) for naval and military armaments, and the sovereign voluntarily offered that the money should be paid to a committee of parliament, and should be issued by them, without being entrusted to the management of the crown, and which offer was gladly accepted by the commons, but at the same time they took no notice of the personal pecuniary necessities of the king, notwithstanding he had referred the highest matters of state to their consideration, and promised not to treat for peace without their advice. Thus was the personal vanity of James humbled, and his previous absurd theories treated with the utmost scorn.

### 6. *The Reformation.*

The policy of Elizabeth's government, both towards papists and puritans, was guided by these principles, that conscience is not to be constrained, but won by force of truth, with the aid of time, and use of all good means of persuasion; and that cases of conscience, when they exceed their bounds, and grow to be matter of faction, lose their nature; and, however they may be coloured with the pretence of religion, are then to be restrained and punished.

The Roman Catholics anticipated that, on the accession of James I., their religion would at least be "tolerated" in the

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Rising importance of the commons.

The king solicits the advice of parliament respecting his son's marriage.

Supplies voted, but given to a committee of the House.

Matters of state referred to the commons.

The policy of Elizabeth towards Roman Catholics and puritans, was, that conscience is not to be restrained, but won by truth and time.

Disappointment of the Roman Catholics as to the conduct of James I.

<sup>82</sup> Kennet, 749.

<sup>83</sup> 6 Hume, 117.

<sup>84</sup> Franklyn, 79. 1 Rushworth, 115. Kennet, 778.

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most extensive import of the term; but in the February after his accession to the throne, he acquainted his council that "he never had an intention of granting toleration to the papists;" that "if he thought his son would condescend to any such course, he would wish the kingdom translated to his daughter;" that "the mitigation of the payment of the recusant Catholics was in consideration, that not any one of them had lifted up his hand against him, at his coming in; and so he gave them a year of probation to conform themselves; which, seeing it had not wrought that effect, he had fortified all the laws that were against them, and made them stronger, (saving from blood, from which he had a natural aversion,) and commanded that they should be put into execution to the uttermost."

These sentiments were afterwards promulgated to the highest constituted authorities, and the arrears of the fines due for recusancy were collected with great severity.

Jesuits, priests, and other seminarists, ordered to quit the kingdom.

A proclamation was likewise issued; in which the king, after adverting to the disputes between the established church and the dissenters, and intimating his hopes of a speedy and satisfactory settlement of these, he announced, that "a greater contagion to the national religion than could proceed from those light differences, was imminent, by persons, common enemies to them both,—namely, the great number of priests, both seminarists and jesuits, abounding in the realm; partly upon a vain confidence of some innovation in matters of religion, to be done by him, which he never intended, nor gave any man cause to expect."

He therefore commanded all manner of jesuits, seminarists, and other priests whatsoever, to depart from the realm, and never to return, upon pain of being left to the penalty of the law, without hope of favour or remission<sup>1</sup>.

All laws against jesuits, &c., to be carried into execution.

Stat. 1 James I. c. 4.

This proclamation of James was followed by Stat. 1 James I. c. 4, which enacted, that the laws of Elizabeth against jesuits and seminary priests should be put into execution. Two third parts of the real estates of every offender were directed to be seized for recusancy; and all who had been or were educated in seminaries, were rendered incapable of taking landed property by descent.

ORIGIN OF THE  
PURITANS.

In the reign of Henry VIII., those who favoured the Reformation were generally inclined to the Lutheran Creed.

<sup>1</sup> 2 Winwood, 49. 2 Butler's Hist. Rom. Cath. 87—89.

discipline, and Liturgy; in the reign of Edward VI., they generally inclined to the doctrine of Calvin; but the change of religion, during the reign of Mary, drove some of the conscientious reformers into exile.

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These refugees, in company with the most eminent of the clergy of the English Catholic church, emigrated to Germany and Switzerland; by the Calvinists they were received with hospitality and kindness, but they were neglected and insulted by the Lutherans: and those English martyrs who, in the reign of Mary, had sealed the Reformation with their blood, were designated by the latter as the “Devil’s Martyrs”<sup>1</sup>.

Emigration of the Anglican clergy to Germany and Switzerland.

Divisions soon arose among the exiles, many of them preserving the form of worship as inculcated by the English Catholic church, but others preferring the Helvetian rites on account of their greater simplicity. The former received the appellation of conformists, the latter that of non-conformists, or puritans<sup>2</sup>.

Dissensions among the exiles.

On the accession of Elizabeth, she perceived that the difficulties of effecting any sincere compromise between these two sects were insuperable, and she adhered to that religion whose principles were based upon the fundamental language of Holy Writ. and whose discipline approximated the nearest to pure Christian charity: thus rejecting the schismatic doctrines of Rome, under which England would have been a priest-ridden province, and frustrating the republican principles of puritanism, which were inconsistent with monarchical government as established in England.

Insuperable difficulties against reconciling the “conformists” and “non-conformists.”

The principal points in difference between the Church of England and the puritans, are thus favourably stated for the puritans by Mosheim<sup>3</sup>:—

Disputed points between the Anglican Church and the puritans.

“The principles laid down by the commissioners of the queen’s high court of commission on the one hand, and the puritans on the other, were very different.

“First. For, in the first place, the former maintained, that the right of reformation,—that is, the privilege of removing the corruptions, and of correcting the errors, that may have been introduced into the doctrine, discipline, or worship of the church,—is lodged in the sovereign, or civil magistrate alone;

Privilege of removing church corruptions vested in the crown, objected to by the puritans.

<sup>1</sup> 1 Hallam’s Const. Hist. 231, et seq. 4 Mosheim (Mackaine), 87.

<sup>2</sup> 2 Butler’s Hist. Rom. Cath. 372. Vide Morgan’s Phoenix Britannicus.

<sup>3</sup> Mosheim Cent. XVI. s. 3, part ii. cited 2 Butler’s Hist. Rom. Cath. 372.

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The rule of church discipline, as derived from Scripture and the decisions of the primitive fathers, objected to by the puritans.

The Church of Rome a true church, though corrupt, not admitted by the puritans.

The perfect form of ecclesiastical government, as established during the first four or five centuries, opposed by the puritans.

while the latter denied that the power of the magistrate extended so far, and maintained, that it was rather the business of the clergy to restore religion to its native dignity and lustre.

“Secondly. The queen’s commissioners maintained, that the rule of proceeding, in reforming the doctrine or discipline of the church, was not to be derived from the sacred writings alone, but also from the writings and decisions of the fathers in the primitive ages. The puritans, on the contrary, affirmed, that the inspired word of God being the pure and only fountain of wisdom and truth, it was from thence alone, that the rules and directions were to be drawn, which were to guide the measures of those, who undertook to purify the faith, or to rectify the discipline and worship of the church; and that the ecclesiastical institutions of the early ages, as also the writings of the ancient doctors, were absolutely destitute of all sort of authority.

“Thirdly. The queen’s commissioners ventured to assert that the Church of Rome was a true church, though corrupt and erroneous in many points of doctrine and government. that the Roman pontiff, though chargeable with temerity and arrogance, in assuming to himself the title and jurisdiction of head of the whole church, was, nevertheless, to be esteemed a true and lawful bishop; and consequently, that the ministers ordained by him, were qualified for performing the pastoral duties. This was a point which the English bishops thought it absolutely necessary to maintain, since they could not otherwise claim the honour of deriving their dignities, in an uninterrupted line of succession, from the apostles. But the puritans entertained very different notions of this matter: they considered the Roman hierarchy as a system of political and spiritual tyranny, that had justly forfeited the title and privileges of a true church; they looked upon its pontiff as Antichrist; and its discipline as vain, superstitious, idolatrous, and diametrically opposite to the injunctions of the Gospel; and in consequence of this, they renounced its communion, and regarded all approaches to its discipline and worship as highly dangerous to the cause of true religion.

“Fourthly. The court commissioners considered, as the best and most perfect form of ecclesiastical government, that which took place during the first four or five centuries: they even preferred it to that which had been instituted by the

apostles; because, as they alleged, our Saviour and his apostles had accommodated the form mentioned in the Scripture to the feeble and infant state of the church, and left it to the wisdom and discretion of future ages to modify it in such manner, as might be suitable to the triumphant progress of Christianity, the grandeur of a national establishment, and also to the ends of civil policy. The puritans asserted, in opposition to this, that the rules of church government were clearly laid down in the Holy Scriptures,—the only standard of spiritual discipline; and that the apostles, in establishing the first Christian church on the aristocratical plan that was then observed in the Jewish sanhedrim, designed it as an unchangeable model, to be followed in all times and in all places.

“Fifthly. The court reformers were of opinion, that things indifferent, which are neither commanded nor forbidden by the authority of Scripture, such as the external rites of public worship, the kind of vestments that are to be used by the clergy, religious festivals, and the like, might be ordered, determined, and rendered a matter of obligation, by the authority of the civil magistrate; and that in such a case, the violation of his commands would be no less criminal, than an act of rebellion against the laws of the state. The puritans alleged, in answer to this assertion, that it was an indecent prostitution of power to impose, as necessary and indispensable, those things which Christ had left in the class of matters indifferent; since this was a manifest encroachment upon that liberty with which the divine Saviour had made us free. To this they added, that such rites and ceremonies as had been abused to idolatrous purposes, and had a manifest tendency to revive the impressions of superstition and popery in the minds of men, could by no means be considered as indifferent, but deserved to be rejected, without hesitation, as impious and profane. Such, in their estimation, were the religious ceremonies of ancient times, whose abrogation was refused by the queen and her council.”

JAMES I.  
1603—1625.

The interference of the civil magistrate, repudiated by the dissenters, in those things which are either commanded nor forbidden by Scripture.

No great political calamities have ever befallen a civilized state, without being distinctly foreseen and plainly predicted by men wiser than their generation. Elizabeth perceived that the principles of these church revolutionists were hostile to monarchy; “men,” she said, “who were over bold with the Almighty, making too many scannings of His blessed will, as

Elizabeth perceived that the principles of the puritans were hostile to monarchy.



JAMES I.  
1603—1625.

The separation of the puritans from the Anglican church, commenced with the Act of Uniformity.

The reason and moderation with which the English Catholic church released herself from the shackles of Romish superstition.

lawyers did with human testaments;" and she declared, that without meaning to encourage the Romanists, she considered these persons more perilous to the state<sup>5</sup>.

The separation of the puritans from the Church of England, essentially began with the Act of Uniformity, in the reign of Elizabeth; the undisguised separation took place after the Assembly of the Clergy, at Lambeth, in 1604,—or, concisely to state the facts, previous to 1604, they were concealed and cowardly traitors; subsequent to that period they were open and audacious rebels.

Hume<sup>6</sup> has justly observed, "of all the European churches, which shook off the yoke of papal authority, no one proceeded with so much reason and moderation as the Church of England; an advantage which had been derived partly from the interposition of the civil magistrate in this innovation, partly from the gradual and slow steps by which the Reformation was conducted in that kingdom. Rage and animosity against the [Roman] Catholic religion was as little indulged, as could be supposed in such a revolution. The fabric of the secular hierarchy was maintained entire: the ancient liturgy was preserved, so far as was thought consistent with the new principles: many ceremonies, become venerable from age and preceding use, were retained; the splendour of the Roman worship, though removed, had at least given place to order and decency; the distinctive habits of the clergy, according to their different ranks, were continued: no innovation was admitted, merely from spite and opposition to former usage: and the new religion, by mitigating the genius of the ancient superstition, and rendering it more compatible with the peace and interests of society, had preserved itself in that happy medium which

<sup>5</sup> The *Presbyterians* are the legitimate descendants of the puritans.

The *Independents*, another denomination of puritans, were founded by Brown, whose object was to model his followers into the form of the Christian Church in its earliest state. The extreme simplicity of this plan was rejected in England, but its leading principle was preserved,—that each congregation is itself a separate and independent church, acknowledging no superiority or right of interference, in any man, or in any body of men. This gave them the name of independents, or of congregation-brethren.

The *Baptists*, in their discipline and worship, as well as in the independency of their particular congregations, very nearly resemble the independents; but differ from them in the administration of baptism,—and this denomination of Christians advocated, from an early period, the principles of religious liberty.

<sup>6</sup> 5 Hume, 149.

wise men have always sought, and which the people have so seldom been able to maintain<sup>7</sup>."

Those objects, which excited the abhorrence of the puritans were the square cap, the tippet, and the surplice, which they called "conjuring garments of popery;" but as long as they only professed to be disquieted by these pitiful scruples, and did not openly seek to disturb the order, nor insult the practice of the English Catholic church, their dissenting principles were tolerated, as contemptible.

But as this faction increased in numbers, so did its principles approximate the nearer to treason and folly. The discipline of Calvin, "the pattern in the mount," was to supersede the English Catholic church; without considering that Calvin's scheme was formed with relation to the peculiar circumstances of a petty state.

Calvin was, as Dr. Southey<sup>8</sup> observes, invited thither by a turbulent democracy, who, having driven away their bishop and his clergy, had just lived long enough in a state of ecclesiastical anarchy, to feel the necessity of having some discipline established among them. An episcopal form was not to be thought<sup>9</sup> of there; nor was there any hope that the people would be satisfied, unless the system which he had proposed, had at least a democratical appearance. Wisely, therefore, because that necessity required that his views should be shaped according to the occasion, he formed a standing ecclesiastical court, of which the ministers were perpetual members, and Calvin himself, perpetual president; twice as many of the laity being annually elected as their associates; to this court, full power was given to decide all ecclesiastical causes, to inspect all men's manners, and punish, as far as excommunication, all persons of whatsoever rank. That the discipline was of the most morose and inquisitorial kind, . . . the members of the court being empowered to pry into the private affairs of every family, and examine any person concerning his

JAMES I.  
1603—1625.

The abhorrence of puritans from the "conjuring garments of popery."

As the puritans increased in number, so did their principles approximate the nearer to treason and folly.

Policy of Calvin.

The Calvinistic discipline most morose and inquisitorial.

<sup>7</sup> There was only one instance in which the spirit of contradiction to the Romanists took place universally in England; the altar was removed from the wall, was placed in the middle of the church, and was thenceforth denominated the communion-table. The reason why this innovation met with such general reception, was, that the nobility and gentry got thereby a pretence for making spoil of the plate, vestures, and rich ornaments which belonged to the altars, (Heylin, preface, 3; Hist. 106. 5 Hume, 152.)

<sup>8</sup> Book of the Church, 412, 413.

<sup>9</sup> Hooker, Pref. Eccles. Polity.

JAMES I.  
1603—1625.

Discipline of Calvin proposed, which, if once planted, there were to be neither beggars nor vagabonds in the land.

own or his neighbours' conduct upon oath, . . . and that the Church of Geneva assumed as high a tone as that of Rome, must be ascribed something to the temper of the times, but more to that of the legislator."

The puritans in England proposed this discipline as the only and sure remedy for all the evils incident to mankind, promising among what Walsingham called "other impossible wonders," that if it were once planted, there should be neither beggars nor vagabonds in the land. "In very truth," said Parker<sup>10</sup>, "they are ambitious spirits, and can abide no superiority. Their fancies are favoured of some great calling; who seek to gain by other men's losses; and most plausible are these men's devices to a great number of the people who labour to live in all liberty. But the one, blinded with the desire of getting, see not their own fall, which no doubt will follow: the other, hunting for alteration, pull upon their necks intolerable servitude. For these fantastical spirits, which labour to reign in men's consciences, will, if they may bring their purposes to pass, lay a heavy yoke upon their necks. In the platform set down by these new builders, we evidently see the spoliation of the patrimony of Christ, and a popular state to be sought. The end will be ruin to religion, and confusion to our country."

Separation of the puritans from the members of the English Catholic church.

As far as it was in the power of the puritans, they separated themselves from the members of the English Catholic church, and refused to hold any communion with them. Instances occurred, where they were strong enough, of their thrusting the clergy out of their own churches, if they wore the surplice, and taking away the bread from the communion table, because it was in the wafer form. Some fanatics<sup>11</sup> spit in the face of their old acquaintance, to testify their utter abhorrence of conformity. There were refractory clergy who refused to baptize<sup>12</sup> by any names which were not to be found in the Scriptures; and as one folly leads to another, the scriptural names themselves were laid aside, for such significant appellations as<sup>13</sup> "Deliverance," "Discipline," "From-above," "More-trial," "More-fruit," "Joy again," "Earth," "Dust," "Ashes," "Kill-sin," and "Fight-the-good-fight-of-faith." But it is not in such follies that the spirit of fanaticism rests

<sup>10</sup> Strype's Parker, 433.

<sup>11</sup> 1 Strype's Annals, 460.

<sup>12</sup> Strype's Whitgift, 329.

<sup>13</sup> Heylin's Hist. of the Presbyterians, 293. Strype's Whitgift, 124.

contented. They boasted in the division which they occasioned, and said it was an especial token that the work came from God, because Christ had declared<sup>14</sup> he came not to send peace into the world, but a sword. That sword, it was their evident belief, was to be intrusted to their hands.

It was not to be supposed that the "Elect;" such as those who would not be baptized except by a scriptural name, or that "Deliverance," "From above," "Joy again," "Killing," &c., would adopt any other precepts, except such as were contained in Scripture, more particularly that injunction which commands Christian charity towards all men, and consequently we find this meek and religious sect thus expressing themselves; that every analogy with the Church of Rome was a symbolizing with Antichrist<sup>15</sup>. "What has Christ Jesus to do with Belial? What has darkness to do with light? If surplices, corner-caps, and tippets, have been badges of idolaters, in the very act of their idolatry; why should the preacher of Christian liberty, and the open rebuker of all superstition, partake with the dregs of the Romish beast? Yea, who is there that ought not rather to be afraid of taking in his hand, or on his forehead, the print and mark of that odious beast?" But this application was rejected by the "English Catholic Church"<sup>16</sup>.

So long as the puritans had been contented with proposing what they desired, "leaving it to the providence of God, and to the authority of the magistrates," they were "charitably" treated, except in cases of extreme impertinence; but when they, according to their friend Walsingham<sup>17</sup>, "affirmed that the consent of the magistrate was not to be attended; when they combined themselves by classes and subscriptions; when they descended into that vile and base means of defacing the government of the church, by ridiculous pasquils; when they began to make many subjects in doubt to take an oath (which is one of the fundamental points of justice in this land, and in all places); when they began to vaunt of their strength<sup>18</sup> and number of their partisans and followers, and to use comminations that their cause would prevail, though with uproar and violence; then it appeared to be no more zeal, no more

JAMES I.  
1603—1625.

Illustrations of  
charity by the  
"puritanical  
elect."

Progress of puri-  
tanical treason,  
under the sem-  
blance of religion.

<sup>14</sup> Strype's Whitgift, 139.

<sup>15</sup> 5 Hume, 151, 1 Strype, 416.

<sup>16</sup> Keith, 565. Knox, 106, 402. 5 Hume, 152.

<sup>17</sup> Hacket's Life of Archb. Williams, ii. 117.

<sup>18</sup> Hooker's Preface, 40.

JAMES I.  
1603—1625.

The puritans presuming that heaven was theirs by sure inheritance, conceive the earth to be theirs, by the same title.

conscience, but mere faction and division;" and coercive measures were adopted against the non-conformists, but it was soon perceived that an appeal to arms would be the fatal result.

The abominable doctrine that the Almighty has placed the greater part of mankind under a fatal necessity of committing the offences for which He has predetermined to punish them eternally, became the distinguishing tenet of the non-conformists; it increased their strength, because those clergy who agreed with them at first in this point alone, gradually became political, as well as doctrinal, puritans; and it exasperated the implacable spirit of dissent, by filling them with a spiritual pride as intolerant as it was intolerable; for, fancying they were the favourites and the elect of the Almighty, they looked upon all who were not with them as the reprobate; and presuming that heaven was theirs by sure inheritance, they were ready on the first opportunity to claim the earth also by the same title<sup>19</sup>.

Puritans, like all factious minorities, make amends by activity for their want of numbers.

The puritans, like all factious minorities, endeavoured, by activity, to make amends for their want of numbers. They exerted themselves to get men of their opinions returned to parliament; they set forth books, and presented what they called the Humble Petition of the Thousand Ministers (though the subscription fell short of that amount by some hundreds), desiring that the offences in the church might be some removed, some amended, and some qualified; offering to show that what they complained of as abuses were not agreeable to the Scriptures, if the king would be pleased to have the point discussed either in writing or by conference among the learned<sup>20</sup>.

Conference at Hampton Court.

In accordance to their wishes, a conference was held before the privy council at Hampton Court, the king himself presiding as moderator, four of the puritan clergy being summoned as representatives of the "Millenaries,"—but this conference terminated like others of a similar character, the disputants being rendered more implacable towards each other.

NEW CODE OF CANONS, which form the basis of the ecclesiastical law.

In 1604, the convocation which was assembled together with the parliament, were directed to frame and incorporate a new body of canons. Little is known in detail of the history of their composition, but they chiefly consist of a digest of old canons, to which some new ones were added. They are in

<sup>19</sup> Southey's Book of the Church, 433.

<sup>20</sup> Ibid. 420.

number one hundred and forty-one, and form the basis of the present ecclesiastical law<sup>21</sup>.

In consequence of these canons not having received a parliamentary sanction, they are not binding on the laity, except so far as they are declaratory of the old. It was decided by Lord Hardwicke, that the clergy, in consequence of their subscription, are bound by the canons confirmed by the king only; but to render them binding on the laity, they must be confirmed by parliament. As these canons were not ratified by the two houses, the new ones are not binding except on those who subscribe them.

The ancient canons, under Stat. 25 Henry VIII., c. 19, are a part of the law of the land. In examining into the legality of every one of these canons, the first point is to ascertain whether it is more ancient than the statute of Henry VIII.; the next point is to discover whether it is repugnant from the law of the land or the king's prerogative. If it were in use before the passing of the statute, and be not repugnant to law, it is a part of the law of the land.

The statute on which the authority of the canon law rests, was intended only to answer a temporary purpose, namely, to afford the church a body of laws, until a review of the whole ecclesiastical constitution should be completed. This review has never been accomplished<sup>22</sup>, although obviously requisite, because, from the subsequent changes which have been effected in the ecclesiastical and civil institutions, these canons have been generally neglected as a code.

The conference at Hampton Court was productive of ecclesiastical ordinances. Thus, "Absolution" was defined by the words "remission of sins." To the confirmation of children, the word "examination" was added; and in the Dominical gospels, "Jesus said to them," was twice substituted for "Jesus said to his disciples." Private baptism was only to be performed by lawful ministers; no part of the Apocrypha which appeared repugnant to the canonical Scripture was to be read. Some limitation of the bishops' jurisdiction was to be made; and excommunication, as it was then used, to be taken away both in name and nature, instead of which, a writ out of Chancery was to be framed for punishing the contuma-

**JAMES I.  
1603—1625.**

The canons of 1604 not binding on the laity.

The canons under Stat. 25 Henry VIII. c. 19, are a part of the law of the land.

A review of the canons obviously requisite.

ALTERATIONS IN  
THE LITURGY,  
ETC.

<sup>21</sup> Sparrow's Canons. Burn's Eccles. Law, Pref. xvi. 2 Neal's Puritans, 25. Fuller, x. 28. 2 Short's Church Hist. 40.

<sup>22</sup> Lathbury's Episcopacy, 72. Vide ante, 194.

JAMES I.  
1603—1625.

Foundation of  
schools.

MARRIAGE OF  
THE CLERGY.

Stat. 1 James I.  
c. 25.

Ecclesiastical  
revenues secured  
by Stat. 1 James  
I. c. 3.

VARIOUS VER-  
SIONS OF THE  
BIBLE.

cious. Schools and preachers were to be provided where they were needed, as soon as might be; and where pluralities were allowed, which was to be as seldom as possible, the livings were to be near each other, and the incumbent was to maintain a preacher at the one which he did not serve himself. One catechism was to be made and used in all places, and order to be taken for an uniform translation of the Bible<sup>23</sup>.

The depravity of Elizabeth's mind was such, that although licentiousness was tolerated, yet marriage was forbidden to all those over whom she had control, and consequently she could not be persuaded to legitimate the marriage of the clergy, and it was only reluctantly suffered during her reign; but by Stat. 1 James I. c. 25, Stat. 2 & 3 and 5 & 6 Edward VI. cc. 21 & 1, were revived, by which such contracts were made lawful<sup>24</sup>. An effectual stop was put to the alienation of church lands by Stat. 1 James I. c. 3, whereby all grants or leases of such to any person, even to the king himself, for more than one-and-twenty years, were declared void<sup>25</sup>.

Prior to this reign, several versions of the Bible were used; but the most common were the "Bishops' Bible," and that called the "Geneva." After Wickliffe's New Testament, the first edition in English was printed by "Tindal," in 1526, on the continent. In 1535, the entire Bible was printed, with a dedication to the king, by "Miles Coverdale." This was the first translation of the whole Bible, and the first allowed by royal authority. Two years after, another edition was published, varying but little from the former, bearing on the title-page the fictitious name of Thomas Matthew. It was printed under the superintendence of John Rogers, the first Protestant martyr in England. In 1539, this translation was revised by Crammer, and reprinted by Grafton. These were almost the only English translations until the reign of Mary, when the exiles executed another at Geneva. Coverdale, Gilby, Whittingham, Knox, and others, were engaged in this work at the period of the queen's death, and remained behind their brethren for the purpose of completing it. Many editions were published between the year 1560, the date of the first edition, and the year 1616, the date of the last. The next translation was set forth under the auspices of Archbishop Parker, in 1568; it

<sup>23</sup> Southey's Book of the Church, 429, 430. 2 Short's Church Hist. 24, et seq.

<sup>24</sup> Vide ante, 246, 247.

<sup>25</sup> Fuller, x. 27. Southey's Book of the Church, 433.

was called the "Bishops' Bible," and the "Great English Bible." This Bible was set up in churches, and continued in general use until the present translation; while the Geneva Bible was commonly read in private families<sup>26</sup>.

In 1604 a royal commission was issued for an authorized translation of the Bible, and which was printed in 1611. The commissioners were commanded to make as little alteration as possible in the "Bishops' Bible," and wherever it did not agree with the original text, recourse was to be had to former translations<sup>27</sup>. No notes were to be affixed beyond what the literal explanation of the Hebrew and Greek words adopted into the text might require; and a few marginal references, and only a few, were to be appended; and this translation is the Bible at present used<sup>28</sup>.

The object which the ministers of the "English Catholic Church" thus attained, was the universal dissemination of the then best translation of the original Hebrew and Greek Scriptures, of which the former was cited by our blessed Lord and his apostles and evangelists without reproof, and has since been handed down to us, together with the latter, by general consent of the early church, as the repository of Divine learning; to these originals all translations must, in reason and by the nature of the case, be referred, as the criterion for deciding differences between them; and from them, accordingly, the Anglican church derives and disseminates her knowledge of God's truth<sup>29</sup>. And it is, as previously stated<sup>30</sup>, by the adoption of this translation of the Bible, instead of the "*Latin Vulgate*," that the "Infallible Church of Rome" has anathematized the English

JAMES I.  
1603—1625.

Publication of an authorized translation of the Bible.

The best translation of the original Hebrew and Greek Scriptures.

Discordant copies of the Latin Vulgate.

<sup>26</sup> Lathbury's Episcopacy, 78, 79. Luther by Riddle, 146—152.

<sup>27</sup> The dates of the various translations of the Bible are as follow :—

DATE	DATE
706 Adhelm, Saxon Psalms.	1534 G. Joye, Jeremiah, Psal. Song of Moses.
721 Egbert's four Gospels.	1535 Coverdale's Bible.
734 Bede's St. John's Gospel.	1537 Matthew's Bible, (i. e. J. Rogers.)
880 Alfred's Version of the Psalms.	1539 Great Bible (Crammer's). Taverner's Bible.
1340 Rolle's (or Hampole's) Psalms, &c.	1560 Geneva Bible.
1380 Wicliff's Bible.	1568 Bishops' Bible (Parker's).
1526 Tyndal's New Testament.	1582 Rhemes New Testament.
1530 " " Pentateuch.	1609 Douay Bible.
1531 " " Jonas.	1611 Authorized Version.
G. Joye, Isaiah.	

<sup>28</sup> 2 Short's Church Hist. 62—77.

<sup>29</sup> Mant's Rome and Holy Scripture Compared, 10.

<sup>30</sup> Vide ante. 202, 203, 213.



JAMES I.  
1603—1625.

The English Catholic church the *only* firm basis of our monarchical government.

Catholic church; although the copies of the "Latin Vulgate" were, at one period, so various and discordant, that the labours of three popes, Pius IV., Sixtus V., and Clement VIII., were employed to procure a correct edition, so as to supersede the Hebrew and Greek versions<sup>31</sup>. But the Church of Rome, to promote her temporal interests, has never hesitated to remove the sacred boundaries of right and wrong, and, as far as in her lay, to teach mankind to call good evil, and evil good; and, speaking in a temporal sense, nothing could have withstood the fallacies, the seductions, and the violence of Rome, or have triumphed over the republicanism of the puritans, but the superior wisdom and sanctity of the "English Catholic Church," a church which is the *only* firm basis of our monarchical government, and of that civil liberty which equally protects and punishes the peasant and the prince, and to an extent unprecedented in ancient or modern times,—nay, even in republican America, where liberty is the theory, and *slavery* the practice, and whose superior "freedom of institutions" consists solely in the recognition of men and principles, which in England would be discarded with the utmost disgust for their infidelity, hypocrisy, and despotism.

## SECTION II.

CHARLES I., March 27, A.D. 1625,—January 30, A.D. 1649.

- |                                                             |                                                       |
|-------------------------------------------------------------|-------------------------------------------------------|
| 1. Characters of the King and Commons.                      | and other Unconstitutional Proceedings.               |
| 2. Proceedings of the First Parliament.                     | 8. The Court of Star Chamber.                         |
| 3. The Parliament of 1626.                                  | 9. Illegal Taxation.—Case of Hampden.                 |
| 4. Illegal Taxation.                                        | 10. The First Parliament of 1640.                     |
| 5. The Parliament of 1628.                                  | 11. Invasion of the Scots, and the "Council of York." |
| 6. The Parliament of 1629.                                  | 12. The Long Parliament.                              |
| 7. Determination of the King to govern without Parliaments, |                                                       |

### 1. *Characters of the King and Commons.*

CHARLES I.  
1625—1649.

Nation divided into two parties, of courtiers and oppositionists.

The despicable character and policy of James I. had been such, that, on the accession of Charles I., the nation was divided into two parties, of "Courtiers" and "Oppositionists;" and the contest ultimately became so protracted, that resentment, passion, prejudices, and faction took place on all sides.

<sup>31</sup> Perceval on Schism, 363.

That Charles I. was an insincere man<sup>1</sup>, and a wicked tyrant, every unprejudiced individual must admit; and, at the same time, confess the character which he has received from Hume, is, in many respects, destitute of truth<sup>2</sup>; but unconstitutional as were the acts of Charles, they were, in comparison with those of the "commons," perfectly consistent with true freedom.

The commons, under guise of the words "patriotism" and "loyalty," committed acts unparalleled in our history for despotism and illegality; in fact, we ever find that, those who are most prodigal in patriotic professions, are in practice the most uncompromising tyrants, and always perfidious in discharging those compacts, their being parties to which, has raised them from insignificance to power; for the man of honour and principle invariably proves, in such compacts, the dupe of the greatest rogue; and he who makes the most extensive professions, is by the unreflecting portion of mankind considered their best friend, until when stripped, in most cases but too late, of his insidious cloak, he is discovered to be their bitterest foe; thus the execution of Charles did not proceed from patriotic principles; but was the fiendish act of a nest of despots, in order to gratify their selfish ambition<sup>3</sup>.

A small<sup>4</sup>, but all-dominant faction of the Long Parliament

CHARLES I.  
1625—1649.

Character of  
Charles I.

Unconstitutional  
proceedings of  
the commons.

He who makes  
the most exten-  
sive professions,  
is falsely con-  
ceived by the  
unreflecting por-  
tion of mankind  
to be their best  
friend.

Constitution des-  
troyed by a fac-  
tion, who de-  
spised equity,  
law, and justice.

<sup>1</sup> Herbert's Mem. Carte's Life of Ormond. Preface to Baron Masere's Tracts. Lord John Russell's Const. Hist. 63, ed. 1821.

<sup>2</sup> The king's manners were not good; he spoke and behaved to ladies with indecency in public (Warburton's Notes on Clarendon, vii. 629, and a passage in Milton's *Defensio pro Populo Anglicano*, quoted by Harris and Brodie). He once forgot himself so far as to cane Sir Henry Vane for coming into a room of the palace reserved for persons of higher rank (Carte's Ormond, i. 366). He had in truth none who loved him, till his misfortunes softened his temper and excited sympathy (2 Hallam's Const. Hist. 307. Oldmixon Hist. of Stuarts, 140. Burnet's Mem. Duke of Hamilton, 161.)

<sup>3</sup> Mrs. Hutchinson (p. 285), alluding to the state of parties in 1647, says, "Indeed, as all virtues are mediums and have their extremes, there rose up after in that house a people, who endeavoured the levelling of all estates and qualities, which those sober levellers were never guilty of desiring; but were men of just and sober principles, of honest and religious ends, and were therefore hated by all the designing, self-interested men of both factions. Colonel Hutchinson had a great intimacy with many of these; and so far as they acted according to the just, pious, and public spirit which they professed, owned them and protected them as far as he had power. These were they who first began to discover the ambition of Lieut.-General Cromwell and his idolaters, and to suspect and dislike it."

<sup>4</sup> Previous to that parliament, commonly called "Barebone's Parliament," when the House was fullest, their numbers did not much exceed one hundred, and on the most important divisions frequently not more than fifty or

**CHARLES I.**  
1625—1649.

was composed of men, who were utterly regardless of equity, law and justice, who despised and designedly destroyed the constitution, because, during its existence, they were not enabled to carry their principles of liberty into full effect,—that is, by an irresponsible tribunal to confiscate property,—trample upon the birthrights of, and deprive of existence, all those who might conscientiously maintain any political or religious feelings at variance with their own; but such is practical liberty, when administered by those who are patriots but in name, or by the members of a popular assembly.

*2. Proceedings of the First Parliament.*

A.D. 1625.

Charles I. assembled a parliament at as early a period as it was possible, after the death of his father, and such was his confidence in national loyalty, that those connected with the court were prohibited from influencing the votes of the electors.

Bad feeling of  
the commons to-  
wards the king.

Upon the meeting of parliament, the question of “supply” occupied immediate attention. The exchequer had been exhausted for naval and military armaments,—anticipations by James I. had been made on the revenues of the crown,—who had also contracted debts with his subjects and foreign princes,—and the country, with the concurrence of the commons, was engaged in an expensive war;—to meet these heavy and urgent demands, the commons voted a supply of two subsidies, amounting to 140,000*l.*<sup>1</sup>, and made their grants of tonnage and poundage last but for one year instead of the king’s life, as had for two centuries been the practice; on which account the bill was rejected by the lords<sup>2</sup>.

Although he had  
committed no  
illegal or tyrannical  
act.

This conduct illustrates the bad feeling of the commons against a king who at that period had committed no illegal or tyrannical act, either by word or deed; and, although he used every possible entreaty<sup>3</sup> to obtain an increase, the commons

sixty members; but it appears from the Journals, these men had retained in their own hands a great part of the executive government, notwithstanding the appointment of the “Council of State,” especially the disposal of offices, which were shared by themselves and dependants, and in a manner unparalleled in history for corruption.

<sup>1</sup> Cabala, 224. 6 Lingard, 240. 1 Hallam’s Const. Hist. 514.

<sup>2</sup> 2 Parl. Hist. N. E. 6.

<sup>3</sup> Dugdale, 25, 26. 6 Parl. Hist. 390, 396, 399. 1 Rushworth, 177, et seq. Franklyn, 108, 109. Com. Journ. August 10, 1625.

were inexorable, being pre-determined, under the mask of "sanctity" and "patriotism," to reduce the crown to the most urgent distress, and then to dictate their terms of concession:— and as they afforded the crown only empty protestations of duty, mingled with "the misbodings of fanaticism", and, the murmurs of distrust," were ultimately dissolved at Oxford.

In order to pursue the Spanish war, privy seals were issued for borrowing money from the subject; but the amount thus acquired was inadequate to the emergency, and greatly increased the unpopularity of the king<sup>5</sup>.

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1625—1649.

Issue of privy seals.

### 3. *The Parliament of 1626.*

In 1626, the pecuniary necessities of Charles compelled him to call a parliament, and every improper effort was made to obtain a court preponderance.

One of the expedients was to nominate the popular leaders of the opposition as sheriffs, by which they became incapacitated to serve as members of parliament<sup>1</sup>. This device, as shallow as extraordinary, while it provoked a clamour against the court, only increased the popularity of the individuals, and encouraged others to occupy their ground, by the character and importance that it earned. It proved that the king and his advisers laboured under the vulgar error, that a few leading men created the opposition, when in truth it arose from causes which these very men were indebted to for all their consequence, and which merely afforded a field for the exertion of talent, that always resides in the community<sup>2</sup>.

Members of the opposition nominated as sheriffs.

The policy of the preceding parliament was immediately pursued; four subsidies and three-fifteenths were voted, but the passing of that vote into a law was reserved till the end of the session<sup>3</sup>; it was therefore apparent that, if the king did not yield to their wishes in every particular, he would receive no supply<sup>4</sup>.

Policy of the preceding parliament pursued.

The impeachment of Buckingham was determined upon, and the "commons," to establish a character for their pure

Impeachment of Buckingham.

<sup>1</sup> 6 Parl. Hist. 353, 374. Com. Journ. July 7, August 1, 1625. 1 Rushworth, 281. 6 Lingard, 239.

<sup>2</sup> 6 Parl. Hist. 407. 1 Rushworth, 192.

<sup>3</sup> D'Ewes, 38. 1 Rushworth, 197. 1 Strafford's Letters and Despatches, 30, 31. 6 Lingard, 246. Com. Journ. Feb. 10, 27, June 9, 1626.

<sup>4</sup> 2 Brodie, 89. <sup>5</sup> Com. Journ. March 27, 1626.

<sup>1</sup> 1 Rushworth, 224. 6 Parl. Hist. 449.

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sense of justice, in the absence of legal proof of his criminality, came to a vote, that "common fame was a good ground of accusation by the commons<sup>5</sup>," and proceeded to frame articles against the duke, which were specimens of frivolity and falsehood<sup>6</sup>. The commons carried their impeachment to the bar of the House of Lords, with a request that the duke might be committed to the Tower, but which was not complied with, because the commons had not heard any evidence in support of their accusation; and, however much such conduct of the commons ought to be execrated by posterity, yet it is impossible, in an abstract sense, to be the apologist of Buckingham,—he who had, by his upstart insolence, caused the war with Spain, and he who, from the non-gratification of his adulterous lust<sup>7</sup>, subsequently involved the nation in another war with France.

Insults offered to  
the commons by  
the king.

Notwithstanding the dependance of Charles upon the House, he seized every opportunity uselessly to insult them; thus during the impeachment of Buckingham, he caused him to be elected Chancellor of the University of Cambridge, and then wrote a public letter, eulogizing the duke, and returning them thanks for his election<sup>8</sup>.

Imprisonment of  
members.

The king commanded the House not to meddle with his minister and servant, Buckingham; and ordered them to finish, in a few days, the bill which they had begun for the subsidies, and to make some addition to them; otherwise they must not expect to sit any longer<sup>9</sup>: he likewise sent to prison<sup>10</sup> Sir Dudley Digges and Sir John Elliott, who managed the impeachment against Buckingham before the House of Lords; but the commons insisted and obtained their immediate release, and it is doubtful whether the king had not recourse to wilful falsehood in order to justify his conduct<sup>11</sup>.

The king, not content with irritating the commons, pursued a similar course with the House of Lords, and forced that

<sup>5</sup> 1 Rushworth, 217. Whitlocke, 5. 6 Hume, 216.

<sup>6</sup> 1 Rushworth, 306, et seq.; 375, et seq. 3 Lords' Journ. 618. Com. Journ. March 25, 1626. Whitlocke, 7.

<sup>7</sup> 1 Clarendon, 38. 1 Motteville, 231. Cabala, 252, 253. 4 Mem. Cardinal de Retz, 185.

<sup>8</sup> 1 Rushworth, 371. Whitlocke, 7.

<sup>9</sup> 6 Parl. Hist. 444; sed vide Ibid. 451. 1 Rushworth, 225. Franklyn, 118.

<sup>10</sup> 1 Rushworth, 356.

<sup>11</sup> Ibid. 358, 361. 1 Hatsell, 147. Franklyn, 180. Parl. Hist. 119.

body to make a resolution<sup>12</sup>, "That no lord of parliament, the parliament sitting, or within the usual times of privilege of parliament, is to be imprisoned or restrained without sentence or order of the House, unless it be for treason, or felony, or for refusing to give surety for the peace;" and they insisted upon the release of the Earl of Arundel, who was illegally confined in the Tower, on account of a marriage which his son had made with a lady of royal blood<sup>13</sup>; and also insisted that a writ of summons should be forwarded, as a matter of right, to the Earl of Bristol, which had been withheld, in order to screen Buckingham from the just complaints which the earl had against him: the writ was forwarded, but with a private order from the king not to take his seat. The earl forwarded the order to the House of Lords; but the king more effectually interposed, by ordering the attorney-general to exhibit charges against the earl<sup>14</sup>, and who was subsequently committed to the Tower<sup>15</sup>: the indecency of this active interference by the king, his subsequent tampering with the lords<sup>16</sup>, and his prohibition to the judges not to answer certain legal questions<sup>17</sup>, in order to secure the conviction of Bristol<sup>18</sup>, requires no commentary.

Nothing, perhaps, rendered the commons more inflexible in the prosecution of their policy, than their being threatened by the king that, if they did not furnish him with supplies, he should be obliged to try *new counsels*, and which message was followed up by a speech from Sir Dudley Carleton, the vice-chamberlain,—“I pray you consider,” said he, “what these new counsels are or may be; I fear to declare those that I conceive. In all Christian kingdoms, you know that parliaments were in use anciently, by which those kingdoms were governed in a most flourishing manner, until the monarchs began to know their own strength, and, seeing the turbulent spirits of their parliaments, at length they, by little and little, began to stand on their prerogatives, and at last overthrew the

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Resolutions of  
the lords on their  
personal freedom  
from imprison-  
ment.

The commons  
threatened by  
the king, that he  
should be obliged  
to try new coun-  
sels.

<sup>12</sup> Hatsell, 141. 2 Parl. Hist. N. E. 125.

<sup>13</sup> 3 Lords' Journ. 526, 528, 552, 559, 562, 564, 566, 580, 581, 594, 630, 646, 650—655. 2 Cobbett's Parl. Hist. 168. 7 Old Parl. Hist. 284. Franklyn, 99. Sanderson, 58. 1 Rushworth, 195.

<sup>14</sup> 3 Lords' Journ. 537, 544, 563, 567, 578, 582, 632.

<sup>15</sup> Ibid. 592, 655—663, 682. 6 Lingard, 255.

<sup>16</sup> 2 Parl. Hist. N. E. 97, 98, 132.

<sup>17</sup> Ibid. 103, 106.

<sup>18</sup> Vide Bristol's Defence, 1 Rushworth, 269. 7 Old Parl. Hist. 21. Cobbett's Parl. Hist. 134. 1 Hardwick's Col. Howell's Familiar Letters, 16. Cabala, 95.

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parliaments, throughout Christendom, except here only with us. Let us be careful, then, to preserve the king's good opinion of parliaments, which bringeth such happiness to this nation, and makes us envied of all others, while there is this sweetness between his majesty and the commons; lest we lose the répute of a free people by our turbulency in parliament<sup>19</sup>”

Measures of the  
court justified  
opposition.

After such language, the people would have been lost to all sense of honorable independence, if they had not required their representatives to oppose the measures of the court, and to erect such barriers, as would preclude any tyrant from destroying their constitutional liberties.

Tyrannical con-  
duct of the com-  
mons.

But the commons acted in a manner almost equally tyrannical. Thus they thought it a sufficient reason for disqualifying any one from holding an office, that his wife, relations, or companions were papists, though he himself were a conformist<sup>20</sup>; they claimed the execution of the penal laws against Catholics, and presented to the king a list of official personages, who were convicted or suspected recusants, in order to their removal<sup>21</sup>; they prepared a remonstrance against the levying of tonnage and poundage without consent of parliament<sup>22</sup>; and also intended to present a petition, which would then have been equivalent to a demand, for removing Buckingham from his majesty's person and council<sup>23</sup>. But to prevent the execution of these projects, the king, contrary to the advice of the House of Lords<sup>24</sup>, and in opposition to the privy council<sup>25</sup>, dissolved the parliament.

Impolicy of  
dissolving the  
commons.

However incensed the king might have been, this dissolution was an impolitic measure, as every House, for a considerable period, had successively imbibed a more deep-rooted hatred and defiance of the crown, and, from such conduct, acquired proportionate popularity with the numerical portion of the country.

<sup>19</sup> 1 Rushworth, 359. Whitlocke, 6.

<sup>20</sup> 6 Hume, 220.

<sup>21</sup> Com. Journ. Feb. 15, 21. March 7, 9. May 3, 11, 23. June 6, 1626. Franklyn, 195. 6 Lingard, 247.

<sup>22</sup> 6 Hume, 220—222.

<sup>23</sup> 1 Rushworth, 400. Franklyn, 199.

<sup>24</sup> 1 Rushworth, 398. Sanderson's Life of Charles I. 58.

<sup>25</sup> Mede's Letters, cited 1 Hallam's Const. Hist. 520.

4. *Illegal Taxation.*

Such were the inflated notions relative to kingly prerogative, and the contempt for national rights, which Charles had imbibed, that had he been able to subdue the people, either by corruption or brute force, it would have been used, and parliaments annihilated; but the only policy he could pursue in order to recruit his finances, was to adopt the precedents of the House of Tudor, and such resources as his own fertile imagination might suggest.

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Despotic policy  
of the king.

A commission was granted to compound with the Roman Catholics, and to agree for dispensing with the penal laws enacted against them<sup>1</sup>; from the nobility he required assistance, but which was sparingly afforded; from London a loan of 100,000*l.* was demanded, but which was refused<sup>2</sup>; from the maritime towns, and adjacent counties, a specified number of armed vessels were required in order to equip a fleet<sup>3</sup>, a course which Elizabeth had adopted; and loans and benevolences were exacted from all persons<sup>4</sup>.

Composition  
with the Roman  
Catholics.

Exaction of loans  
and benevo-  
lences.

The foreign policy of the country having unexpectedly experienced sad reverses, the crown was reduced to the extreme of necessity; and the ministry finding it impossible to persuade the nation that, because subsidies had been voted in the House of Commons, they should not refuse to pay them, though no bill had been passed for that purpose<sup>5</sup>, issued an act of council, ordering a "general loan" from the subject, as assessed in the Rolls of the last *proposed*, but not enacted, subsidy; and it was stated, that the sums so to be exacted, were not to be called "subsidies," but "loans."<sup>6</sup>

Act of council,  
ordering a gene-  
ral loan.

The commissioners were enjoined,—“If any shall refuse to lend, and shall make delays or excuses, and persist in his obstinacy, that they examine him upon oath, whether he has been dealt with to deny, or refuse to lend, or make an excuse for not lending? who has dealt with him, and what speeches or persuasions were used to that purpose? and that they also shall charge every such person, in his majesty's name, upon

Injunctions  
issued to the  
commissioners.

<sup>1</sup> 1 Rushworth, 413. Whitlocke, 7. 6 Hume, 224.

<sup>2</sup> 1 Rushworth, 415—421. Franklyn, 206.

<sup>3</sup> 1 Rushworth, 415.

<sup>4</sup> 18 Rymer, 730, 7, 9, 41, 55, 71, 86. 1 Rushworth, 416, et seq. 6 Lingard, 256.

<sup>5</sup> Mede's Letters, cited 1 Hallam's Const. Hist. 521. Harleian MSS. 37, fol. 192.

<sup>6</sup> Ibid.



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his allegiance, not to disclose to any one what his answer was<sup>7</sup>."

Doctrine of passive obedience.

To support these proceedings, Sibthorpe and Manwaring, by command of the king<sup>8</sup>, inculcated from the pulpit the doctrine of "passive obedience;" the whole authority of the state was represented as belonging to the king alone, and all limitations of law and constitution were rejected as seditious and impious<sup>9</sup>; and Archbishop Abbot, who refused to license such doctrines, was suspended from the exercise of his office, banished from London, and confined to one of his country seats<sup>10</sup>.

National reluctance from arbitrary taxation.

Unless the nation were steeped in infamy and cowardice it was not to be supposed they could tacitly submit to such measures, although the council had determined to enforce their ordinances. Many refused to pay the sums for which they had been assessed; and for such contumacy, were either impressed for the navy, committed to prison, or had soldiers billeted upon them<sup>11</sup>; amongst those who had been so committed, were Sir Thomas Darnel, Sir John Corbet, Sir Walter Earl, Sir John Heveningham, and Sir Edmund Hamden, who demanded immediate releasement, not as : favour, but as a legal birthright, and sued out a writ of *habea corpus*<sup>12</sup>.

Suspension of the writ of *habea corpus*.

The return made to the writ was, that the warrant assigned no cause for their commitment, but that their detention was commanded by the king and council; to which it was pleaded that this was not sufficient cause for refusing bail or release to the prisoners.

Tampering with the judges.

The crown, in order to secure a favourable judgment, removed Sir Randolph Crew from, and appointed Sir Nicholas Hyde to, the office of chief justice: and although the prisoners demanded their release under the twenty-ninth section of Magna Charta, which provides that "no free man shall be taken or imprisoned, unless by lawful judgment of his peers, or the law of the land;" and also, under Stat. 25 Edward III., that "no one shall be taken by petition or suggestion to the

<sup>7</sup> 1 Rushworth, 419. Franklyn, 207. 18 Rymer, 835—842.

<sup>8</sup> 18 Rymer, 764. Bibliotheca Regia, 298—305. 4 Wilkins' Con. 471. Heylin's Life of Laud, 161 et seq. Laud's Diary.

<sup>9</sup> 1 Rushworth, 422. Franklyn, 208.

<sup>10</sup> 1 Rushworth, 431. 6 Hume, 226.

<sup>11</sup> Ibid. 419, 422, 431. 7 Parl. Hist. 310.

<sup>12</sup> 1 Rushworth, 458. Franklyn, 224. Whitlocke, 8.

king or his council, unless it be (*i.e.*, but only,) by indictment or presentment, or by writ original at the common law," the court were so base, as to act upon similar principles to those by which their timorous and corrupt predecessors had been influenced in 34 Elizabeth, as to order a general judgment to be entered, that no bail could be granted upon a commitment by the king in council<sup>13</sup>.

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The money of which the people were robbed, under the plea of "prerogative," was insufficient to conduct the government in its domestic and foreign relations; and such was the universal discontent, that to continue its exaction was physically impossible: it was therefore imperative to call a parliament, and the dislike of Charles to that assembly was exemplified at the council-table, when some proposing a parliament, the king said, "he did abominate the name"<sup>14</sup>.

Parliament  
summoned.

### 5. *The Parliament of 1628.*

Upon its assembling, it was found to consist of men who justly held in abhorrence the conduct of the crown,—and, moreover, were possessed of such riches, that their property was computed to surpass three times that of the House of Peers<sup>1</sup>; and although many of the members had been cast into prison, and all of them had suffered by the royal despotism, their deliberations were not intemperate, but were conducted with discretion and firmness, being aware that the executive had every inclination to invade their essential privileges, either in speech, person, or estate.

The court in a  
minority.

The king, as if to establish another proof of his indiscretion, acquainted the House, in his first speech, that, "if they should not do their duties in contributing to the necessities of the state, he must, in discharge of his conscience, use those other means which God had put into his hands, in order to save that which the follies of other men may otherwise hazard to lose. Take not this as a threatening," added his majesty, "for I scorn to threaten any but my equals; but an admonition from him, that both out of nature and duty, hath most care of your preservations and prosperities<sup>2</sup>."

Indiscreet lan-  
guage of the king  
to the commons.

<sup>13</sup> 7 State Trials, 147. Vide ante 270, 271.

<sup>14</sup> Mede's Letters, Sept. 30, 1626.

<sup>1</sup> Sanderson, 106. Walker, 330.

<sup>2</sup> 3 Lords' Journ. 687. 1 Rushworth, 477. Franklyn, 233. 6 Lingard, 272.

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The lord keeper, by the king's direction, subjoined,—“ This way of parliamentary supplies, as his majesty told you, he hath chosen, not as the only way, but as the fittest, not because he is destitute of others, but because it is most agreeable to the goodness of his own most gracious disposition, and to the desire and weal of his people. If this be deferred, necessity and the sword of the enemy make way for the others. Remember his majesty's admonition, I say, remember it<sup>3</sup>. ”

The commons  
bound to watch  
the measures of  
the executive.

The constitution had recognised<sup>4</sup>, that the commons were not only entitled, but bound, to watch the measures of the executive; as disposing of the public money, they were imperiously called upon to inquire into the causes of every demand, and to be satisfied, not only of its necessity, and of the integrity of the ministers to devote it to its legitimate object, but of their ability to employ it to the best advantage<sup>5</sup>.

Acts of power  
may casually be  
exercised, and  
yet liberty exist.

Though precedents were pleaded in favour of the king's measures, a considerable difference, upon comparison, was observed between the cases. Acts of power, however irregular, might casually, and at intervals, be exercised by a prince for the sake of dispatch and expediency; and yet liberty still subsist, in some tolerable degree, under his administration.

But when all these were reduced into a system, were exerted without interruption, were studiously sought for, in order to supply the place of laws, and subdue the refractory spirit of the nation, it was necessary to find some speedy remedy, or finally to abandon all hopes of preserving the freedom of the constitution<sup>6</sup>.

These sentiments dictated the proceedings of the commons: an unopposed vote was passed against arbitrary imprisonments and forced loans<sup>7</sup>, and five subsidies were likewise voted, which were to be payable within the space of twelve months, but no sophistry could induce them to pass this resolution into a law, until a constitutional redress of grievances had been obtained.

Complaint of  
grievances.

Forced loans, benevolences, taxes without consent of par-

<sup>3</sup> 1 Rushworth, 479. Franklyn, 234.

<sup>4</sup> Vide ante 99, 105, 121, 126.

<sup>5</sup> 2 Brodie, 103.

<sup>6</sup> 6 Hume, 231. Franklyn, 243, 245. 1 Rushworth, 499, 502. 7 Parl. Hist. 363.

<sup>7</sup> Franklyn, 251. 1 Rushworth, 513. Whitlocke, 9.

liament, arbitrary imprisonments, billeting of soldiers for the purposes of oppression, and commissions to try military offenders by martial law, were the grievances of which the commons complained: and as, in truth, they only sought those privileges which had belonged to their ancestors, they resolved to call their demands a "Petition of Right," as implying that it contained a corroboration or explanation of the ancient constitution, but which the kings had ever, in cases of necessity or expediency, been accustomed at intervals to elude, and they disclaimed any infringement upon royal prerogative, or acquisition of new liberties.

The *Petition of Right*, after enumerating the recent violations of the laws respecting illegal exactions, arbitrary commitments, quartering of soldiers or sailors, and infliction of punishment by martial law, prays the king "that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament: and that none be called to make answer or take such oath, or to give attendance, or be confined, or otherwise molested or disquieted concerning the same, or for refusal thereof; and that no freeman, in any such manner as is before mentioned, be imprisoned or detained; and that your majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burthened in time to come; and that the aforesaid commissions for proceeding by martial law may be revoked and annulled; and that hereafter no commissions of the like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by colour of them any of your majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land."

The hypocritical and despotic character of Charles is exemplified by his conduct previous to the passing of this statute,—such as secretly consulting the judges as to the mode in which its provisions could be evaded<sup>9</sup>, sending a letter to<sup>10</sup>, and procuring the interference of the peers<sup>11</sup>, in order to oppose its enactment, coming to the House of Lords and

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Petition of  
Right.

Stat. 3 Charles I.  
c. 1.

The hypocritical  
and despotic cha-  
racter of Charles  
illustrated.

<sup>9</sup> Stat. 3 Charles I. c. 1, s. 10.

<sup>10</sup> 32 Hargrave MSS. 97.

<sup>11</sup> 7 State Trials, 198. 1 Rushworth, 560, 643. 7 Parl. Hist. 111. 2 Cobbett's Parl. Hist. 410, 435, et seq.

<sup>12</sup> 7 State Trials, 199. 1 Rushworth, 561. 7 Parl. Hist. 116 Whitlocke, 10.

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giving an equivocal assent<sup>12</sup>, by which the bill would have been rendered nugatory<sup>13</sup>:—and nothing but the firmness of the “commons,” combined with his pecuniary distress, made him ultimately yield<sup>14</sup>.

Reliance could  
not be placed  
upon the honour  
of the king.

If the commons had placed any reliance upon the honour of the king, if they had exacted less than they did, they would have betrayed their country: because, even after the writs had been issued for the then present parliament, commissioners had been appointed, consisting of all the principal officers of state, to raise money “by impositions or otherwise, as they should find ‘most convenient, in a case of such inevitable necessity, wherein form and circumstance must be dispensed with, rather than the substance be lost and hazarded<sup>15</sup>,”—which scheme, if successful, would have rendered parliaments useless; and another commission had likewise been issued, and money remitted, in order to raise foreign troops and transport them to England, to support the crown in its treacherous, illegal, financial policy<sup>16</sup>.

Remonstrance of  
the commons.

When the Petition of Right had become a law, the commons granted the five subsidies, but did not relax in endeavouring to procure the redress of other grievances. They agreed to present a remonstrance to the crown, relating to the compositions with Catholics,—the violation of public liberty,—the injuries done to commerce,—the unsuccessful expeditions to Cadiz and the Isle of Rhé,—the encouragement given to Arminians,—and the commission for importing German horse,—and to ascribe such misfortunes to the pernicious counsels of Buckingham<sup>17</sup>. The right to levy tonnage and poundage had not been granted by parliament to the king, but, notwithstanding, he had exacted this imposition. The commons now prepared a bill giving him that right; but, in order to enforce a redress of their complaints, they asserted, previous to the bill becoming a law, that the levying of tonnage and poundage, without consent of parliament, was a violation of the liberties of the people, and an open infringement of the Petition of Right<sup>18</sup>.

<sup>12</sup> 3 Lords' Journ. 335, June 2, 1626. 6 Lingard, 288, 289.

<sup>13</sup> 7 State Trials, 212. 1 Rushworth, 590.

<sup>14</sup> 3 Lords' Journ. 843. Com. Journ. June 6, 7, 8, 12, 1628. 1 Rushworth, 116.

<sup>15</sup> 1 Rushworth, 614. 8 Parl. Hist. 214. Mede's Letters. Harl. MSS.

<sup>16</sup> 1 Rushworth, 612. 6 Hume, 257, 258. Cabala, part ii. 217.

<sup>17</sup> 8 Parl. Hist. 219, 220. 1 Rushworth, 619.

<sup>18</sup> 1 Rushworth, 628. Com. Journ. June 18, 20, 1628. 1 Hallam's Const. Hist. 537.

The king, to prevent the delivery of their remonstrance, prorogued the parliament; and acquainted them, tonnage and poundage he had never meant to give away, nor could possibly do without.

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1625—1649.

Prorogation of  
parliament.

Notwithstanding the declaration of the commons as to tonnage and poundage, that impost was enforced, although it was in the first instance resisted, and the question of its legality submitted to the judges, who held that the king's right had been recognised in Bates's case<sup>19</sup>.

### 6. *The Parliament of 1629.*

Theological and metaphysical controversies, and the question of tonnage and poundage, engrossed the attention of the House upon its re-assembling. The officers of the customs were summoned before the commons, to justify seizing the goods of merchants who had refused to pay tonnage and poundage; the barons of the exchequer were questioned concerning their decrees<sup>1</sup>; and one of the sheriffs of London was committed to the Tower for his activity in supporting the officers of the customs. But the king upheld the acts of all those who had assisted in its assessment and levy.

Officers of the  
customs, &c.  
summoned before  
the House.

A remonstrance was then framed by the commons against levying "tonnage and poundage" without the consent of parliament; and upon the question being called for, the speaker said,—“that he had a command from the king to adjourn, and to put no question<sup>2</sup>,” upon which he left the chair. A disgraceful scene of confusion was the result: during which a remonstrance was approved of, declaring papists and Arminians capital enemies to the commonwealth; those who levied tonnage and poundage were branded with the same epithet; and if the merchants voluntarily paid such duties, they were to be stigmatised as betrayers of English liberty, and public enemies. And under such excited feelings the House was prorogued, and then dissolved<sup>3</sup>.

Levies of ton-  
nage and pound-  
age, declared by  
the commons to  
be illegal.

<sup>19</sup> 1 Rushworth, 409.

<sup>1</sup> 8 Parl. Hist. 301. 1 Rushworth, 654.

<sup>2</sup> 5 Parl. Hist. 466.

<sup>3</sup> 6 Hume, 275. 6 Lingard, 290, 291.

7. *Declaration of the King to govern without Parliaments ;  
and other Unconstitutional Proceedings.*

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Determination  
of Charles to  
govern the coun-  
try without par-  
liaments.

Charles had now determined to govern the country without the intervention of parliament<sup>1</sup>, having issued a proclamation which declared he should account it presumption for any to prescribe a time to him for parliament, the calling, continuing, or dissolving of which, was always in his own power; and he should be more inclinable to meet parliament again, when his people should see more clearly into his intents and actions, when such as have bred this interruption shall have received their condign punishment. He also declared that he would “not overcharge his subjects by any more burdens, but satisfy himself with those duties that were received by his father, which he neither could nor would dispense with; but should esteem them unworthy of his protection, who should deny them<sup>2</sup>.”

Commital of the  
members of the  
opposition.

The king, with his accustomed impolicy, committed to prison those members of the commons who had recently taken the most prominent part in opposing his views, and seized their papers; thereupon they sued out a writ of *habeas corpus*, to which it was returned, that they were detained for notable contempts, and for stirring up sedition, alleged in a warrant under the king's sign manual<sup>3</sup>.

Informations in  
the Court of  
King's Bench.

It was contended that this return was insufficient under the “Petition of Right;” to support its validity, the king's prerogative of arbitrary imprisonment was relied upon, and that a petition in parliament “is no law, yet it was for the honour and dignity of the king to observe it faithfully, but it is the duty of the people not to stretch it beyond the words and intention of the king. And no other construction can be made of the petition, than that it is a confirmation of the ancient liberties and rights of the subject. So that the prerogative remained in the same quality and degree, as it was before the petition.”

The judges, equally fearful of the Star Chamber as of a

<sup>1</sup> 3 Millar's Eng. Gov. 204. 8 Parl. Hist. 389.

<sup>2</sup> 19 Rymer, 62. Vide etiam ibid. 33. 7 Parl. Hist. 389. 2 Rushworth, 3. 6 Lingard, 293.

<sup>3</sup> 1 Rushworth, 661, 681. 7 Parl. Hist. 354. May, 13.

future parliamentary impeachment, acquainted the king they were bound to bail the prisoners, but requested his directions to do so<sup>4</sup>. The king not only refused his permission, but prevented the prisoners from appearing before the court in order to receive judgment; and did not release them until they had been imprisoned for some months:—thus were the laws of England protected by this “amiable monarch.”

An information in the King's Bench was also exhibited against three of these prisoners, for seditious speeches and tumults in parliament; they refused to answer for such acts before an inferior court, but the private influence of the king with the judges, united with their perfidy, secured a conviction; the court holding that they had jurisdiction though the alleged offences were committed in parliament,—that the privileges of parliament did not extend to breaches of the peace,—and that all offences against the crown were punishable in the Court of King's Bench; the defendants were then sentenced to imprisonment during the king's pleasure,—that they should not be released without sureties for their good behaviour and making submission,—and that two of the defendants should be respectively fined for the tumult 1000*l.*, the other defendant for the seditious words 500*l.*<sup>5</sup>

The effect of these despotic proceedings greatly increased the power and popularity of the commons, and, in an inverse ratio, the weakness and unpopularity of the court.

In order to procure pecuniary supplies, various expedients were pursued. Tonnage and poundage continued to be levied under the royal authority, and new impositions were laid on several kinds of merchandise<sup>6</sup>; and the officers received orders from the council to enter into any house, warehouse, or cellar, to search any trunk or chest, and to break any bulk whatever, on default of the payment of customs<sup>7</sup>.

Compositions were made with recusants<sup>8</sup>; so likewise with those who had neglected to receive the order of knighthood<sup>9</sup>;

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1625—1649.

Despotic measures of the king, and perversion of justice.

Unconstitutional taxation.

Composition with recusants.

<sup>4</sup> 1 Rushworth, 661, 681. 7 Parl. Hist. 354 May, 13. Whitlocke's Mem. 14. 2 Parl. Hist. N. E. 369, 376.

<sup>5</sup> 1 Rushworth, 674—680, 689—701. Whitlocke, 14. 2 Hallam's Const. Hist. 3—8. 6 Lingard, 291—293.

<sup>6</sup> 2 Rushworth, 8. May, 16.

<sup>7</sup> 2 Rushworth, 9.

<sup>8</sup> Ibid. 11, 12, 13, 247.

<sup>9</sup> Statutum de Militibus. 15 Rymer, 124, 493, 504. 2 Rushworth, 70—72. May, 16. 2 Inst. 593. 2 Parl. Hist. 943. 2 Brodie, 282. 2 Macauley, 107. 2 Hallam, 13. 6 Hume, 294.



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1625—1649.

The grant of  
monopolies.

and such as were possessed of crown lands under defective titles <sup>10</sup>.

Although monopolies had been abolished under James I., there was an exceptive proviso as to new inventions; and on pretence of these, and of erecting new companies and corporations, this grievance was renewed. The manufacture of soap was given to a company, who paid a sum for their patent <sup>11</sup>; leather, salt, and many other commodities, even down to linen rags, were likewise put under restrictions <sup>12</sup>, and a stamp duty was for the first time imposed upon cards <sup>13</sup>.

Proclamations  
interfering with  
the rights of per-  
sons and prop-  
erty.

Proclamations, enforced by the Star Chamber, were issued, which directly interfered with the rights of persons and of property, whenever a political object, personal caprice, or pecuniary rapacity, were sought to be acquired.

The nobility and gentry were ordered to quit London for their country seats <sup>14</sup>; prices of provisions were regulated <sup>15</sup>; tradesmen and artificers could not trade without having been admitted into some mercantile corporation <sup>16</sup>; houses were ordered to be destroyed by the sheriff of London, to show St. Paul's cathedral to advantage <sup>17</sup>; all shops in Cheapside and Lombard Street, except those of goldsmiths, were directed to be closed, so that the avenue to St. Paul's might be grander <sup>18</sup>; and, in 1637, Cromwell, Pym, Hambden, and all others of the puritans, were prohibited from quitting England <sup>19</sup>; and persons quitting the country, were subjected to an inquisitorial oath <sup>20</sup>.

### 8. *The Court of Star Chamber.*

In all political governments, the life of the meanest subject should be deemed precious; no man should be stripped of his

No man should  
be deprived of  
his honour or  
property, until  
after an impar-  
tial investiga-  
tion.

<sup>10</sup> 2 Rushworth, 49. 1 Clarendon, 176. 2 Strafford's Letters, 117. 20 Rymer, 585.

<sup>11</sup> 19 Rymer, 323. Kennet, 64. 2 Rushworth, 132. 1 Strafford's Letters, 446. Laud's Diary, 51.

<sup>12</sup> 20 Rymer, 340. 6 Hume, 296.

<sup>13</sup> 2 Rushworth, 103.

<sup>14</sup> Ibid. 144.

<sup>15</sup> 19 Rymer, 512.

<sup>16</sup> 20 Rymer, 113, 157. 6 Lingard, 300—302.

<sup>17</sup> 2 Rushworth, 79.

<sup>18</sup> Ibid. 313.

<sup>19</sup> Ibid. 409, 418. Mather's Hist. of New England, book i. 1 Hutchinson's Hist. of Massachusetts Bay, 42.

<sup>20</sup> 19 Rymer, 699. 2 Hallam's Const. Hist. 38.

honour or property, but after an impartial and strict inquiry; and no man should be bereft of life, until his very country has attacked him—an attack that should never be made without leaving him all possible means of making his defence—the ultimate end of all governments being the positive good of the people for whose sake they were made, and without whose consent they could not have been made. In fact, equal laws, and their impartial administration, are to the collective body, what health is to every individual body; without health, no pleasure can be tasted by man; without equal laws, and their impartial administration, no happiness can be enjoyed by society. But under the dominion of Charles I. and the Commonwealth, these principles were contemned.

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1625—1649.

The Court of Star Chamber extended its authority by encroachments on the jurisdiction of the other courts; and although it could not adjudge the punishment of death, yet it arbitrarily exercised the powers of fine, imprisonment, pillory, whipping, branding, and cutting off the ears.

The Court of Star Chamber encroaches on the jurisdiction of the other courts.

The mode of process was sometimes of a summary nature; the accused being privately examined, and his examination read in the court. If he was thought to have confessed sufficient to deserve sentence, it was immediately awarded without any formal trial or written process. But the more regular course was by information filed at the suit of the attorney-general, or in certain cases of a private relator. The party was brought before the court by writ of subpœna; and having given bond with sureties not to depart without leave, was to put in his answer upon oath, as well to the matters contained in the information, as to special interrogatories. Witnesses were examined upon interrogatories, and their depositions read in court. But it appears that the Court of Star Chamber could not sentence to punishment on the deposition of an eye witness, a rule which did not prevent their receiving the most imperfect and inconclusive testimony<sup>1</sup>.

Its mode of process.

The criminal jurisdiction was that which made this court so dreaded; for severity and iniquity were its predominant principles under the Tudors and Stuarts. It took cognizance of forgery, perjury, riot, maintenance, fraud, libel, and conspiracy, and all other misdemeanors for which the law had not provided

The criminal jurisdiction exercised with severity and iniquity.

<sup>1</sup> 2 Hallam's Const. Hist. 45. Harl. MSS. 142, &c. 2 Rushworth Abr. 114.

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an adequate punishment; and it was this court that first established the doctrine that "the publication of truth might be a libel<sup>2</sup>," and overruled a current of authorities to the contrary.

Case of Prynne.

Prynne, the barrister, having written a puritanical work decrying stage plays, music, dancing, hunting, &c. and affirming that playhouses were Satan's chapels, play-haunters little better than incarnate devils, and that so many steps in a dance were so many paces to hell, was, for publishing such opinions, sentenced, by the influence of Laud, to be put from the bar, to stand in the pillory at Westminster and Cheapside, to lose one ear at each of those places, to pay 5000*l.* to the king, and to be imprisoned during life<sup>3</sup>.

Case of  
Leighton.

Leighton, a Scots divine, for a libel against the hierarchy, was publicly whipped at Westminster and set in the pillory, had one side of his nose slit, one ear cut off, and one side of his cheek branded with a hot iron, which was repeated the next week at Cheapside, and was also sentenced to suffer perpetual imprisonment in the Fleet<sup>4</sup>.

Fines imposed by  
the Star Cham-  
ber.

A gentleman of the name of Allington was fined 12,000*l.* for marrying his niece. One who had sent a challenge to the Earl of Northumberland was fined 5000*l.*; another, for saying the Earl of Suffolk was a base lord, 4000*l.* to him, and a like sum to the king. Sir David Forbes, for opprobrious words against Lord Wentworth, incurred 5000*l.* to the king and 3000*l.* to the party. Another was fined and set in the pillory for engrossing corn, though he only kept what grew on his own land, asking more in a season of dearth than the overseers of the poor thought proper to give<sup>5</sup>.

Cases of the  
Bishop of Lin-  
coln and  
Osbaldiston.

The Bishop of Lincoln, having received some letters from Osbaldiston, the master of Westminster school, wherein Laud was described as "a little great man," and in another passage a "little urchin," was sentenced to pay, for not communicating these private and confidential letters, 5000*l.* to the king, and 3000*l.* to the archbishop, to be imprisoned during pleasure, and to make a submission. Osbaldiston, who escaped out of the country, was sentenced to pay a still heavier fine, to be deprived of all his benefices, to be imprisoned and make

<sup>2</sup> Hudson's Treatise on the Court of Star Chamber, 100, 102.

<sup>3</sup> 2 Rushworth, 201, 202. Whitelock, 18. Harris' Life of Charles I. 262.

<sup>4</sup> 2 Rushworth, 56. 3 Howell's State Trials, 383. 6 Lingard, 304.

<sup>5</sup> 2 Hallam's Const. Hist. 48.

submission, and to stand in the pillory before his school in Dean's-yard, with his ears nailed to it.

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By an information in this court, the city of London, for some alleged breaches, forfeited a grant of extensive possessions in the county of Derry, and were fined 70,000*l.*<sup>6</sup>, and the king so far disgraced his rank as openly to solicit the judges to give an award in his favour<sup>7</sup>.

The foregoing are only a few cases which occurred in this reign<sup>8</sup>, but are sufficient to establish the "slavish degradation" of the people.

### 9. *Illegal Taxation—Case of Hampden.*

The crown, proceeding upon the principle that national privileges were neither sacred nor inviolable, when opposed to its will, issued writs for the levying of "ship money," each county being rated at a particular sum, and which was afterwards assessed upon individuals<sup>1</sup>, and payment enforced by distress<sup>2</sup>.

Payment of ship money enforced by distress.

The nation were alarmed, and universally protested against this imposition, because, by an acquiescence, they would have recognised the arbitrary right of the crown to impose any species of taxation; and, although the judges of assize inculcated on their circuits the necessary obligation of forwarding the king's service by complying with his writ, every person conceived that they acted upon the dictates of interest, rather than of conscience.

In order to avert legal discussions, an extra-judicial but written opinion was obtained from the twelve judges, who stated that "when the good and safety of the kingdom in general is concerned, and the whole kingdom in danger, his majesty might, by writ under the great seal, command all his subjects, at their charge, to provide and furnish such number of ships, with men, munition, and victuals, and for such time as he should think fit, for the defence and safeguard of the kingdom; and that by law he might compel the doing thereof, in case of refusal or refractoriness; and that he was the sole

Extra-judicial opinion of the judges on the absolute nature of the prerogative.

<sup>6</sup> 3 Rushworth's Abr. 123. Whitlocke, 35. 1 Strafford's Letters, 374.  
<sup>2</sup> Clarendon, 151, 293.

<sup>7</sup> 1 Strafford's Letters, 340.

<sup>8</sup> 2 Rushworth, 416—449, 803—817. 3 Howell's State Trials, 770—824.  
<sup>2</sup> Hackett, 43—140.

<sup>1</sup> 2 Rushworth 257, 258.

<sup>2</sup> Ibid. 214. 6 Lingard, 330—332.

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1625—1649.

Illegal taxation  
resisted by  
Chambers.

judge, both of the danger, and when and how the same was to be prevented and avoided<sup>3</sup>."

This being only an extra-judicial opinion, and a public appeal to the laws being the only visible resource against "lawless despotism," payment of the tax was resisted by a person of the name of Chambers, who instituted an action against the lord mayor for false imprisonment,—the mayor having imprisoned Chambers, for refusing to pay the sum for which he had been assessed in the writ: a special justification by virtue of the king's writ was pleaded, but Mr. Justice Berkley decided that there was a rule of law and a rule of government; that many things which could not be done by the first rule, might be done by the other, and would not suffer any argument against the lawfulness of ship money<sup>4</sup>.

Question for  
judicial determi-  
nation in the case  
of Hampden.

Lord Say and Mr. Hampden were not deterred from endeavouring to seek legal redress from this taxation, but the decision in the case of the latter proved, that law and justice were subverted. The question for judicial determination was, whether the king had a right, on his own allegation of public danger, to require an inland county to furnish ships, or a prescribed sum of money by way of commutation, for the defence of the kingdom?

The irresistible authorities that were urged against the right of the crown, were the statutes "Confirmatio Chartarum" and "de Tallagio non concedendo" of 25 Edward I., the enactments and transactions respecting pecuniary impositions in the reign of Richard II., and lastly the "Petition of Right," by which taxation had been abrogated without consent of parliament<sup>5</sup>;—but it was ceded that in case of actual invasion, or its immediate prospect, the rights of private men must yield to the safety of the whole; and then, not only the sovereign, but each man in respect of his neighbour, might lawfully do many things, which, under other circumstances, would be utterly illegal.

Reliance placed  
on the intrinsic  
authority of the  
crown.

The counsel for the crown relied upon the intrinsic absolute authority of the king: in fact, that no limitation on the king's authority could exist but by the king's sufferance; and which principle was supported by the majority of the bench<sup>6</sup>, Mr.

<sup>3</sup> 2 Rushworth, 352—358. Biblioth. Regia, 246—250.

<sup>4</sup> 2 Rushworth, 253, 267.

<sup>5</sup> Vide ante, 59, 105, 121, 126, 377.

<sup>6</sup> Finch, C. J., Jones, Berkley, Vernon, Crawley, Trevor, and Weston

Justice Vernon stating "that the king, pro bono publico, may charge his subjects for the safety and defence of the kingdom, notwithstanding any act of parliament, and that a statute derogatory from the prerogative doth not bind the king; and the king may dispense with any law in cases of necessity." Finch, C. J., a man of little learning, and less respectability, held, that, "no act of parliament, could bar a king of his regality, as that no lands should hold of him, or bar him of the allegiance of his subjects or the relative on his part, as trust and power to defend his people; therefore acts of parliament to take away his royal power in the defence of his kingdom are void; they are void acts of parliament to bind the king not to command the subjects, their persons, and goods, and I say, their money too; for no acts of parliament make any difference<sup>7</sup>."

"When ship money was transacted at the council board," says Lord Clarendon, "the people looked upon it as a work of that power they were all obliged to trust, and an effect of that foresight they were naturally to rely upon. Imminent necessity and public safety were convincing persuasions; and it might not seem of apparent ill consequence to them, that upon an emergent occasion the regal power should fill up an hiatus, or supply an impotency in the law. But when they saw in a court of law (that law that gave them title to, and possession of, all they had) reasons of state urged as elements of law—judges as sharp-sighted as secretaries of state, and in the mysteries of state; judgment of law grounded upon matter of fact of which there was neither inquiry nor proof, and no reason given for the payment of the thirty shillings in question but what included the estates of all the standers by, they had no reason to hope that the doctrine, or the promoters of it, would be contained within any bounds; and it is no wonder that they who had so little reason to be pleased with their own condition, were no less solicitous for, or apprehensive of, the inconvenience that might attend any alteration."

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1625—1649.

Judgments of Mr.  
Justice Vernon  
and Chief Jus-  
tice Finch.

Reasons of state  
supported as  
elements of law  
by the judicial  
bench.

gave judgment for the crown. Brampton, C. J., Davenport, C. B., pronounced for Hampden on technical grounds, but adhered to the majority on the principal question; Denham decided in favour of Hampden; Croke and Hutton unequivocally denied the alleged prerogative of the crown, and the lawfulness of the writ for ship money.

<sup>7</sup> 5 State Trials, 245, 255. 2 Rushworth, 480—600. 1 Clarendon, 69. 6 Lingard, 332.

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1625—1649.

National indignation excited at the conduct of the judges.

National indignation and desire of revenge were justly excited at such wilfully illegal decisions, and of which Archbishop Laud affords an illustration, who, in writing to Lord Wentworth, said, that Croke<sup>a</sup> and Hutton had both gone against the king very sourly; "The accidents which have followed upon it already are these: first, the faction are grown very bold; secondly, the king's moneys come in a great deal more slowly than they did in former years, and that to a very considerable sum; thirdly, it puts thoughts into wise and moderate men's heads, which were better out; for they think if the judges, which are behind, do not their parts both exceeding well and thoroughly, it may much distemper this extraordinary and great service<sup>b</sup>."

The invasions on liberty had become as avowed as they were profligate.

In fact, all existing records prove that the invasions of liberty had become as avowed as they were profligate; the very semblance of justice, which is at least an homage to law, as hypocrisy is to virtue, had been despised, and despotism unmasked now raged in all its deformity.

#### 10. *The First Parliament in 1640.*

Causes which induced the ruinous of a parliament.

Although the king's expressed opinion, that "parliaments are like cats, they grow crust with age," was unchanged, yet the misfortunes which he had experienced in Scotland,—the universal discontent of his subjects in England,—and his pecuniary necessities, compelled him, in 1640, after eleven years' intermission, to call another parliament.

Redress of national grievances.

The House was composed of independent country gentlemen, who scorned a slavish dependance upon the court; instead, therefore, of taking notice of the king's complaints against Scotland, or his applications for supply, they entered upon the redress of national grievances; which were arranged under three heads, namely, innovations in religion,—invasions of private property,—and breaches of the privileges of parliament.

Innovations in religion.

1. Under the first they enumerated all the charges made by the puritans against the archbishop, and complained of the

<sup>a</sup> Croke, whose conduct on the bench on other political questions, was not without blemish, had resolved to give judgment for the king, but was withheld by his wife, who implored him not to sacrifice his conscience for fear of any danger or prejudice to his family, being content to suffer any misery with him, rather than be an occasion for him to violate his integrity. White-locke, 25.

<sup>b</sup> 2 Strafford Letters, 170.

authority recently given to the convocation to make new, and amend the old constitutions, an authority necessarily affecting the rights and liberties of the laity.

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2. The second comprised the monopolies granted by the crown,—the levy of ship money during so many years,—the enlargement of the royal forests,—the charges laid on the counties during the late campaign,—and the vexatious prosecutions on account of the refusal to pay unwarrantable taxes, and of resistance to unlawful monopolies.

Invasions of  
private property.

3. They reckoned as breaches of privilege the command given by the king to the late speaker to adjourn the House without its consent, and the attempts of the courts of law to punish the members for their behaviour in parliament:—on all these subjects it was resolved to solicit the opinion and co-operation of the lords<sup>1</sup>.

Breaches of the  
privilege of par-  
liament.

The king having ineffectually applied to the House to consider the question of supply, solicited the intercession of the House of Lords, who advised the commons to render immediate pecuniary assistance,—which “advice” was by the commons voted a breach of privilege<sup>2</sup>.

The crown offered to abolish “ship money,” if twelve subsidies, about 600,000*l.*, were voted, payable in three years; to which it was answered, that by bargaining for the remission of that duty, the commons would, in a manner, ratify the authority by which it had been levied; at least, give encouragement for advancing new pretensions of a like nature, under the expectancy of resigning them on like advantageous conditions<sup>3</sup>; particularly as the right of taxation had been recognised in a court of law as an inherent prerogative of the crown.

The crown offers  
to abolish ship  
money.

The king, despairing of receiving an adequate supply, and understanding that a vote would pass to destroy the revenue of “ship money,” by which all opposition would be renewed to its levy, dissolved the parliament<sup>4</sup>; and the unconstitutional practice of committing to prison some of the leading members of the opposition, and searching their houses for papers, was adopted<sup>5</sup>.

Members of the  
commons com-  
mitted.

A declaration was issued by the crown, stating that the commons imitated the bad example of all their predecessors

Charles issues an  
explanatory de-  
claration of his  
conduct.

<sup>1</sup> Com. Journ. April 17, 20, 22, 23, 24, 1640. 3 Rushworth, 1147. 6 Lingard, 368.

<sup>2</sup> 1 Clarendon, 134.

<sup>3</sup> 6 Hume, 352. 1 Clarendon, 136.

<sup>4</sup> 6 Hume, 355.

<sup>5</sup> 2 Hallam's Const. Hist. 125.



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of late years,—in making continual encroachments on his authority,—in censuring his whole administration and conduct,—in discussing every circumstance of public government,—and in their indirect bargaining and contracting with their king for supply; as if nothing ought to be given him but what he should purchase, either by quitting somewhat of his royal prerogative, or by diminishing and lessening his standing revenue; and that these practices were contrary to the maxims of their ancestors, and were totally incompatible with monarchy.

ACTS OF THE  
CONVOCA-  
TION.

Enactment of  
canons.

The convocation, notwithstanding the dissolution of parliament, continued to sit, and granted a supply to the king, from the spirituality; new canons were framed, in which it was enacted that every officiating minister should, on some one Sunday in every quarter, insist on the divine right of kings, and on their prerogatives, in which the power of taxing was indirectly implied; and that the day of the king's inauguration should be carefully observed. Severe enactments were also made against papists, Socinians, and all sectaries; an oath was imposed on the clergy, and the graduates in the universities, "to maintain the established government of the church by archbishops, bishops, deans, chapters, *et cetera*."

No person who  
had conscientiously  
entered  
into the ministry  
could object to  
the *et cetera*  
oath.

No one who had conscientiously entered the ministry could object to the purport of this oath, and it was so worded that by every untainted mind it might have been taken as honestly as it was meant. Nevertheless, an outcry was easily raised against it in those evil times, it being urged that the word "*et cetera*," which saved a needless enumeration of offices, covered some insidious meaning, and therefore it was branded with the name of the "*et cetera* oath:"—but any clamour of this kind, which bids defiance to reason, is always favourable to the views of faction<sup>7</sup>.

Members of the  
convocation  
insulted.

These ecclesiastical proceedings were considered so illegal, that the members of the convocation were insulted and abused, and obliged to be protected by guards<sup>8</sup>: riots also occurred at St. Paul's, the populace exclaiming "No bishop, no high commission<sup>9</sup>."

<sup>6</sup> Sparrow's Collection of Canons. Southey's Book of the Church, 448.  
<sup>7</sup> Short's Church Hist. 109. Dugdale, 65. Stat. 13 Charles II. c. 12.

<sup>8</sup> Southey's Book of the Church, 449.

<sup>9</sup> 1 Nalson, 542. Whitlocke, 33. Neal, 632.

<sup>9</sup> Ibid. Dugdale, 65. 6 Hume, 356.

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1625—1649.

11. *Invasion by the Scots; and the Council at York.*

The Scots having passed the Tweed, the king had recourse to every expedient for pecuniary resources; money was borrowed from the ministers and courtiers<sup>1</sup>,—ship money was rigorously exacted<sup>2</sup>,—citizens of London were imprisoned for refusing a loan<sup>3</sup>,—the Spanish merchants who had bullion in the Tower were compelled to yield a loan of 40,000*l.*<sup>4</sup>,—all the pepper bought from the East India Company upon trust, was sold at a heavy discount, for ready money<sup>5</sup>,—and a new imposition was laid on the counties, under the name of coat and conduct money, for clothing to defray the travelling charges of the new levies<sup>6</sup>,—but this policy, augmented, as a natural sequence, the discontents of the nation.

Illegal expedients for pecuniary resources.

Notwithstanding every expedient for supplies had been adopted, the treasury was soon exhausted; the army had imbibed the contagion of general disgust<sup>7</sup>; and to prevent the advance of the Scots, a treaty was contracted with those mercenary invaders<sup>8</sup>.

The king then summoned the peers to a council at York, hoping to levy supplies by their authority; but when assembled, they advised the calling of a parliament, to which the king reluctantly assented.

The king advised to summon a parliament.

12. *The Long Parliament.*

It is impossible to deny<sup>9</sup> that grievances existed which needed redress,—fundamental questions of government to be settled,—a balance between the royal prerogative and popular rights to be adjusted,—and disputed limits of authority and liberty which required to be defined; and which, from their number, their importance, and their intricacy, would naturally occasion great difficulties, and even justify some exertion of extraordinary vigour on the part of the popular interest: the duty of the present parliament was to provide such barriers, that neither the lives nor properties of Englishmen

Existence of grievances which needed redress.

<sup>1</sup> 6 Hume, 356.

<sup>2</sup> 3 Rushworth, 1173, 1182, 1184, 1199, 1200, 1203, 1204.

<sup>3</sup> 3 Rushworth, 1181.

<sup>4</sup> 6 Hume, 356.

<sup>5</sup> May, 63.

<sup>6</sup> 20 Rymer, 432. 3 Rushworth, 163. 1 Nalson, 389.

<sup>7</sup> 3 Rushworth, 1190, 1191.

<sup>8</sup> 1 Clarendon, 155.

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1625—1649.

Republics have  
ever been raised  
upon the ruins of  
monarchy, under  
professions of  
extreme loyalty.

The character of  
the commons,  
as described by  
Mr. Denzil Hollis.

The best prin-  
ciples for the  
destruction of  
monarchy.

Impeachment of  
Strafford.

should over again be sacrificed, to the arbitrary will of a tyrant;—in fact, they were to renovate, but not destroy, the constitution.

This regicide parliament was opened by a speech from Mr. Pym, who enlarged in specious commendation of the nature and goodness of the king,—“a virtuous and pious prince, who loved his people, and was a great lover of justice;”—but the implacable enemies of princes always assume the mask of friendship; and republics have ever been raised upon the ruins of monarchy, under professions of extreme loyalty.

The best illustration of the component parts of this assembly, is in the Memoirs of Mr. Denzil Hollis, himself a leading reformer, who says,—“The members of parliament, who then engaged, declared themselves to desire nothing but the settlement of the kingdom in the honour and greatness of the king, and in the happiness and safety of the people. This, I am sure, was the ultimate end of many, I may say, of the chiefest of those who at that time appeared. . . . Whilst these men acted in the simplicity of their hearts, there was another generation of men, which, like frozen snakes that lay in their bosoms, seemed to desire only the same things with them; and that the same should have contented them. But it was nothing so; for they had further designs,—to destroy and cut off not a few,—to make the land an *Aceldama*, to ruin the king, and as many of the nobility and gentry as they could,—alter the government,—and have no order in the church, nor power in the state, over themselves. This was the venom they harboured, which at first they were not warm enough to put forth;”—in fact, these oppositionists regulated their proceedings by those principles which Montesquieu has stated to be the best for the destruction of monarchy, namely, “Abolish the privileges of the lords, of the clergy, and of the cities, in a monarchy; and you will soon have a popular state, or else a despotic government<sup>1</sup>.”

The first measures of the commons were to impeach the Earl of Strafford and Archbishop Laud<sup>2</sup>, for a design of subverting the laws and constitution of England, and introducing arbitrary and unlimited authority into the kingdom, and who were committed to prison; upon which Lord Keeper Finch<sup>3</sup>

<sup>1</sup> Montesq. Esp. Loi, L. 2. c. iv.

<sup>2</sup> 1 Clarendon, 177. Whitlocke, 38. 3 Rushworth, 1365. 1 Baillic, 217.

<sup>3</sup> 1 Clarendon, 177. Whitlocke, 38. 1 Rushworth, 129—136.

and Mr. Secretary Windebanke<sup>4</sup> had the good sense to quit the kingdom, by which they were saved a similar treatment. The other ministers and instruments of Charles were either forced, by flight, to save themselves from the terrors of an impeachment, or, if their obscurity rendered them less obnoxious, they remained in silent apprehension, lest, by opposing the popular current, they might provoke their destiny<sup>5</sup>:—by such proceedings the king was deprived of those councillors who were most competent to afford him advice.

To prevent future abuse, it was requisite to retrench the prerogative, so that long intermissions or immediate dissolutions of parliament should not be occasioned by the crown; it was therefore enacted, that if the chancellor, who was first bound under severe penalties, failed to issue writs by the third of September in every third year, any twelve or more of the peers might exert this authority. In default of the peers, that the sheriffs, mayors, bailiffs, &c. should summon the voters; and in their default, the voters themselves should meet and proceed to the election of members, in the same manner as if the writs had been regularly issued from the crown. Nor could the parliament, after it was assembled, be adjourned, prorogued, or dissolved, without their own consent, during the space of fifty days<sup>6</sup>.

Beneficial laws were passed, declaring the illegality of ship money,—that tonnage and poundage could not be levied without consent of parliament<sup>7</sup>, and which is the last statute restraining the crown from arbitrary taxation,—the Courts of Star Chamber<sup>8</sup>, High Commission,—President and Council of the North,—President and Council of Wales and the Welsh Marches,—Duchy of Lancaster and County Palatine of Chester, were abolished: but the jurisdiction of the latter two courts, in matters touching the king's private estate, was not affected. By such salutary measures no courts of judicature remained, except those in Westminster Hall, which took cognizance only of the common and statute law; the king might thenceforth issue proclamations, but no one was bound

CHARLES I.  
1625—1649.

Triennial bill.

16 Charles I. c. 1.

Beneficial laws,  
and redress of  
grievances.

<sup>4</sup> 5 Rushworth, 122. 1 Clarendon, 178. Whitlocke, 37.

<sup>5</sup> 3 Millar's Eng. Gov. 246.

<sup>6</sup> 1 Clarendon, 209. Whitlocke, 39. 5 Rushworth, 189. 2 Hallam's Const. Hist. 131, 132.

<sup>7</sup> Com. Journ. June 1, 1641. 1 Clarendon, 208.

<sup>8</sup> 5 Rushworth, 307.

CHARLES I.  
1625—1649.

to obey them; and the judges, instead of receiving patents during pleasure, received patents during good behaviour<sup>9</sup>.

Declaration rela-  
tive to impress-  
ment.

Statutes were likewise passed reforming the Stannary Courts of Cornwall and Devon, retrenching the prerogative of purveyance, and compulsory knighthood; the extent of the royal forests was determined, according to their boundaries, in 20 James I.; and at a subsequent period of this parliament, a legislative declaration was made relative to impressment, which stated, that "by the laws of this realm, none of his majesty's subjects ought to be impressed, or compelled to go out of his country, to serve as a soldier in the wars, except in case of necessity, of the sudden coming in of strange enemies into the kingdom, or except they be otherwise bound by the tenure of their lands or possessions."

Improper inter-  
ference of the  
king in parlia-  
mentary debates.

Although Elizabeth and James had interfered in matters while under debate in parliament, yet when Charles, in a speech from the throne, so adverted to this Impressment Bill, as an invasion of his prerogative, it was resented by both Houses as a breach of privilege<sup>10</sup>; since which, no sovereign has so interfered.

Punishment of  
judicial and  
ministerial  
officers.

Upon the constitutional principle, that "The king can do no wrong<sup>11</sup>," the commons severely punished the judges<sup>12</sup>, magistrates<sup>13</sup>, and all other officers and ministers, who had participated in the recent illegal proceedings under the crown<sup>14</sup>; they even expelled those members of the House, who were "monopolists," with the exception of one, who escaped because he was a violent partisan of their own<sup>15</sup>; and the sanction of the lords and commons, as well as that of the king, was, for the first time, declared necessary for the confirmation of ecclesiastical canons<sup>16</sup>.

Ecclesiastical  
canons to be con-  
firmed by parlia-  
ment.

It was these acts which served to acquire for the House a temporary character for "justice," and thus essentially depressed the authority of the crown; and if equal law, justice, and moderation had actuated all the other proceedings of the commons, their conduct would have been justly esteemed by posterity.

<sup>9</sup> May, 107.

<sup>10</sup> Com. Journ. Dec. 16, 1640. 2 Parl. Hist. 963. Nalson, 750.

<sup>11</sup> 1 Clarendon, 176.

<sup>12</sup> Whitlocke, 39.

<sup>13</sup> 1 Clarendon, 176.

<sup>14</sup> Whitlocke, 37. 5 Rushworth, 235, 359. 1 Nalson, 807. 1 Clarendon, 177—206.

<sup>15</sup> 6 Hume, 374.

<sup>16</sup> 1 Nalson, 678. 6 Lingard, 386. Vide ante, 207, 248, 294.

There was no act of the commons which, in an abstract sense, was more unconstitutional, than enacting that they were incapable of dissolution, unless they were consenting parties<sup>17</sup>, and the precipitancy with which it passed both houses, viz., eight days<sup>18</sup>, may be construed either as a proof of fear, or of a deep-laid scheme to annihilate every authority but their own;—more particularly as they rejected an amendment of the lords, limiting their existence to two years.

The bill was introduced under the pretext, that money could not be borrowed, unless security was given that they should have a permanent existence, which is absurd, because the three branches of the legislature might have united, and which would have been a more negotiable security.

Its origin has been ascribed to a universal impression that the king intended to bring the army up from the north of England, to intimidate the parliament, dissolve its sittings, wreak vengeance upon his opponents, and finally to release the Earl of Strafford<sup>19</sup>.

The country was certainly justified in placing no reliance upon the conduct of the king, when it is considered that after the abolition of “monopolies,” by statute, he had anew erected them<sup>20</sup>; that he had wilfully trampled upon the Petition of Right<sup>21</sup>; and that some of his friends were only waiting for an eligible opportunity to introduce “popish supremacy<sup>22</sup>,”—it is, therefore, difficult to say that the measure was not justified by political necessity, but the commons were not invested with power from their constituents, to deprive the latter of their elective franchise.

The government being thus transferred from an almost absolute monarchy to a democracy, and most of the essential grievances redressed, those leaders who had been only influenced to improve the constitution, not to destroy it, were reluctant from further innovations, but desirous of consolidating their authority; but in this, as in all revolutionary proceedings, the most violent put themselves forward: their vigilance and activity seems to multiply their number, and the daring of the few wins the ascendancy over the indolence or the pusillanimity

CHARLES J.  
1625—1649.

The commons  
incapable of dis-  
solution, unless  
with their own  
consent.

Insincerity of  
the crown.

Made in which  
factious minori-  
ties attain their  
objects.

<sup>17</sup> 1 Clarendon, 261, 262. 5 Rushworth, 264. <sup>18</sup> May, 67.

<sup>19</sup> 1 Mém. de Motteville, 263. 2 Nalson, 286, 294. 3 Brodie, 189.

<sup>20</sup> 6 Hume, 374. Vide ante, 382.

<sup>21</sup> 2 Rushworth, 414. Vide ante, 330—332.

<sup>22</sup> 2 Mazure, Hist. de la Révol. en 1688, 419. 2 Clarendon, 84. 2 Nalson, 786, 792—804. 2 Hallam's Const. Hist. 168.

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1625—1649.

of the many<sup>23</sup>. In fact, weak and well-meaning men are the first tools of revolutionists, and their earliest victims, of which the revolutions of France, have afforded melancholy illustrations.

Although the Scotch and English armies cost the country 80,000*l.* monthly, a sum much greater than had ever previously been levied on the subject, it caused no dissatisfaction, for the Scots were useful allies to the malcontent party in England, and, in order further to conciliate them, and that party, the presbyterian discipline and worship was encouraged.

RELIGIOUS CANT  
THE COM-  
MONS.

The commons were edified with puritanical sermons of seven hours' duration<sup>24</sup>, and the sacrament was always taken before the public business commenced; but as a specimen of their pious and Christian character, the name of the *spiritual lords* was commonly left out in acts of parliament; and the laws ran in the name of "king, lords, and commons."

Episcopal clergy.

The episcopal clergy of that day, were equally eminent for their learning and exemplary character, as those of the present day, yet such was the wretched hypocrisy of the puritanical saints, that the epithet of "ignorant and vicious priesthood" was applied to all churchmen, addicted to the established discipline and worship<sup>25</sup>, and a bill passed the House of Commons, prohibiting all clergymen from the exercise of any civil office, and, as a consequent, the bishops were to be deprived of their seats in the House of Peers; but it was rejected by the lords<sup>26</sup>. The commons then prepared a bill to abolish episcopacy, but it was not then passed, it being conceived expedient to await a more favourable opportunity<sup>27</sup>. From this period, if not much earlier, the national disputes were as much religious as political.

Ecclesiastical  
inquisition.

A committee was elected by the House, as a court of ecclesiastical inquisition, who began with harassing, imprisoning, and molesting the clergy, and ended with sequestering and ejecting them:—and, in order to join contumely to cruelty, they gave the sufferers the epithet of "scandalous," and endeavoured to render them as odious as they were miserable<sup>28</sup>; the crimes of which the majority of them had been guilty, were bowing at the name of "Jesus," placing the

<sup>23</sup> 6 Lingard, 639.

<sup>24</sup> 1 Nalson, 530, 533.

<sup>25</sup> 6 Hume, 384.

<sup>26</sup> 1 Clarendon, 237.

<sup>27</sup> Ibid.

<sup>28</sup> 1 Clarendon, 199. Whitlocke, 122. May, 81. 6 Hume, 387.

communion table in the east, and other practices, which the established government, both in church and state, had strictly enjoined.

CHARLES I.  
1625—1649.

But the "Sabbatarian Controversy" excited the greatest prejudices against the established church. During the period of popery, and the reigns of Elizabeth and James, the observance of Sunday was not regulated by religious discipline, *i. e.*, an exclusive or abstract dedication of that day to religious studies.

The Sabbatarian  
Controversy.

The disputes that now arose upon this subject, became very much subdivided; thus,—one party admitted of no other term for its designation than that of the "Sabbath," and as the consequent, it was equally detested by other sects, some of whom adopted the name of "Sunday," or "Lord's-day."

Designations of  
"Sabbath,"  
"Sunday," and  
the "Lord's-  
day."

Some confined the beginning and duration of the day to the time occupied by the Service of the Church, but others enjoined a strict observance of it from the Saturday evening till the following night.

Commencement  
and duration of  
Sunday.

One party founded the institution on the sole authority of the Church, others attributed the change in the day to the appointment of the Church, founded on apostolic usage, while the original dedication of one day in seven, rested on the command given by the Almighty, at the Creation.

With respect to the observance of the day,—The advocates of the greatest strictness would allow of no amusements but walking, while the maintainers of the contrary opinion devoted those parts of the day, which were not occupied by religious services, to every species of enjoyment.

Observance of  
Sunday.  
Amusements  
reprobated.

The ordinary amusements, in country parishes, were called "Church-ales," "Clerk-ales," and "Bid-ales," besides the revels or feasts of the dedication of the church: they were merry-makings, consisting of drinking and sports, particularly dancing, which took place either every Sunday, or on particular occasions.

Recreations per-  
mitted and exer-  
cised.

Such meetings occasioned disorders, and for their repression, some of the "religious and political members of the community," became "mere bedlamites:" thus, some preachers went so far as to maintain, that to do any work or servile business on the Lord's day, is as great a sin as to kill a man, or to commit adultery; that to throw a bowl, to make a feast, or dress a wedding dinner, on the Lord's day, is as great a sin as for a man to take a knife and cut his child's throat.

Intolerance of  
the religious  
sectaries.



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1625—1649.

That to ring more bells than one on the Lord's day, is as great a sin as to commit murder. "And I know also a town of my acquaintance, the preachers there brought the people to that pass, that neither baked nor roast meat was to be found in all the parish, for a Sunday's dinner, throughout the year, &c. &c.<sup>29</sup>."

The "Book of Sports."

To correct this "puritanism," the king issued a proclamation commonly known as the "Book of Sports;" in which it was stated that no curtailment of the liberty of his poorer subjects would be permitted, with regard to their amusements on the Sunday. The clergy were commanded to read this proclamation in their respective churches: some of the clergy implicitly obeyed, others only partially; but a great number absolutely refused to obey such a command, and this dissent considerably strengthened the rebels.

Schisms among the clergy.

The principles of the Anglican church, relative to the institution of Sunday.

The subject itself, as Dr. Short observes, is one on which so few directions are contained in the Scriptures, that much latitude of opinion might naturally be expected with regard to it. Its name, perhaps, and its exact duration, are of less practical importance; but the nature of the institution, and the manner in which it ought to be observed, are of the greatest consequence. The generally-received opinion, and that which tallies best with the institutions of the Church of England, seems to be, that the dedication of one day in seven to the service of God, is part of the moral law; that the change of this day from Saturday to Sunday is sanctioned by the custom of the apostles; and that the Christian's liberty will allow of any method of keeping this day, which answers the command, of abstaining from work, and keeping it holy. Amusements, in the abstract, contain nothing which need infringe on this holiness: yet it is obvious, that some amusements will so far unfit the mind for religious duties, that they must be totally inadmissible; that to persons situated in different spheres of life, a different rule may be applicable<sup>30</sup>.

Persecution of the Roman Catholics.

The Roman Catholics were, during this reign, persecuted with most unrelenting fury; all officers of that religion were removed from the army; application was made to the king for

<sup>29</sup> Preface to Prideaux, on the Sabbath. 2 Short's Church Hist. 90, 91. May, 2. 2 Rushworth, 191, 192.

<sup>30</sup> 2 Short's Church Hist. 92, 93. Franklyn, 437. Whitlocke, 16, 17.

seizing two-thirds of the lands of recusants,—and the execution of the severe laws against the priests was insisted upon<sup>31</sup>.

The essential characteristics of the pseudo-religious sects, are thus described by Hume<sup>32</sup>. “During those times, when the enthusiastic spirit met with such honour and encouragement, and was the immediate means of distinction and preferment, it was impossible to set bounds to the holy fervours, or confine, within any natural limits, what was directed towards an infinite and a supernatural object. Every man, as prompted by the warmth of his temper, excited by emulation, or supported by his habits of hypoerisy, endeavoured to distinguish himself beyond his fellows, and to arrive at a higher pitch of saintship and perfection. In proportion to its degree of fanaticism, each sect became dangerous and destructive; and as the independents went a note higher than the presbyterians, they could less be restrained within any bounds of temper and moderation. From this distinction, as from a first principle, were derived, by a necessary consequence, all the other differences of these two sects.

“The independents rejected all ecclesiastical establishments, and would admit of no spiritual courts, no government among pastors, no interposition of the magistrate in religious concerns, no fixed encouragement annexed to any system of doctrines or opinions. According to their principles, each congregation, united voluntarily, and by spiritual ties, composed, within itself, a separate church, and exercised a jurisdiction, but one destitute of temporal sanctions, over its own pastor and its own members. The election alone of the congregation was sufficient to bestow the sacerdotal character; and as all essential distinction was denied between the laity and the clergy, no ceremony, no institution, no vocation, no imposition of hands, was, as in all other churches, supposed requisite to convey a right to holy orders.

“The enthusiasm of the presbyterians led them to reject the authority of prelates, to throw off the restraint of liturgies, to retrench ceremonies, to limit the riches and authority of the priestly office: the fanaticism of the independents, exalted to a higher pitch, abolished ecclesiastical government, disdained creeds and systems, neglected every ceremony, and confounded all ranks and orders. The soldier, the merchant, the me-

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1625—1649.

Popular efforts to arrive at the highest pitch of saintship and perfection.

The independents reject all ecclesiastical establishments.

The presbyterians reject the authority of prelates.

<sup>31</sup> 5 Rushworth, 158, 160—166, 267. 1 Nalson, 739, 749. 1 Clar. Papers, 353—485. 2 Challoner, 123. Bibliotheca Regia, 35—39.

<sup>32</sup> 7 Hume, 18—21.

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1625—1649.

The doctrines of the dissenters arrive at the height of extravagance and fanaticism.

Dissenters coincided in the persecution of papacy.

The political systems of the dissenters kept pace with their religious systems.

INFRACTION OF  
STRAFFORD.

chanic, indulging the fervours of zeal, and guided by the illapses of the spirit, resigned himself to an inward and superior direction, and was consecrated, in a manner, by an immediate intercourse and communication with heaven.

“The Roman Catholics, pretending to an infallible guide, had justified, upon that principle, their doctrine and practice of persecution: the presbyterians, imagining that such clear and certain tenets, as they themselves adopted, could be rejected only from a criminal and pertinacious obstinacy, had hitherto gratified, to the full, their bigoted zeal, in a like doctrine and practice: the independents, from the extremity of the same zeal, were led into the milder principles of toleration. Their mind, set afloat in the wide sea of inspiration, could confine itself within no certain limits; and the same variations, in which an enthusiast indulged himself, he was apt, by a natural train of thinking, to permit in others. Of all Christian sects, this was the first, which, during its prosperity, as well as in its adversity, always adopted the principle of toleration: and it is remarkable, that so reasonable a doctrine owed its origin, not to reasoning, but to the height of extravagance and fanaticism.

“Popery and prelacy alone, whose genius seemed to tend towards superstition, were treated by the independents with rigour. The doctrines, too, of fate or destiny, were deemed by them essential to all religion. In these rigid opinions, the whole sectaries, amidst all their other differences, unanimously concurred.

“The political system of the independents kept pace with their religious. Not content with confining, to very narrow limits, the power of the crown, and reducing the king to the rank of first magistrate, which was the project of the presbyterians; this sect, more ardent in the pursuit of liberty, aspired to the total abolition of the monarchy, and even of the aristocracy; and projected an entire equality of rank and order, in a republic quite free and independent.”

The commons were determined, *per fas aut nefas*, to deprive the Earl of Strafford of existence,—because he was the first man of the age, in both the cabinet and the field, the king’s most faithful counsellor, and the only man who had energy to repress the consummation of their base and treasonable projects<sup>33</sup>: and this case, like all others, is typical of the

<sup>33</sup> Com. Journ. Oct. 31, Nov. 2, 11, 1644. Land’s Hist. 432—440. 5 Rushworth, 780. Com. Journ. *passim*.

pure administration of justice when administered by the House of Commons under the banners of "liberty," or by any political assembly.

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1625—1649.

A sworn and secret committee of both Houses was appointed to arrange the evidence and charges against Strafford<sup>34</sup>; privy councillors were examined with regard to opinions delivered at the council board,—an unheard-of and disgraceful proceeding<sup>35</sup>; and impeachments, which were never prosecuted, were exhibited against those persons whose testimonies were likely to exculpate the prisoner<sup>36</sup>.

Disgraceful examination of privy councillors.

The earl was charged with "an endeavour to subvert the fundamental laws;" to which he answered that such an offence was not recognised as high treason by the statute law, and that arbitrarily to introduce it, would be a subversion of all law.

The commons, finding it impossible to support the impeachment for treason, then introduced a bill of attainder, but which experienced the conscientious opposition of fifty-nine members, for which their names were posted up under the title of "Straffordians, and betrayers of their country," and they were publicly insulted.

Bill of attainder against Strafford.

The solicitor-general, in carrying up the bill to the lords, stated, that though the testimony against Strafford was not clear, yet, in this way of bill, private satisfaction to each man's conscience was sufficient, even should no evidence be produced; and that the earl had no title to plead law, because he had broken the law. It is true, added he, we give law to hares and deer,—for they are beasts of chase: but it was never accounted either cruel or unfair to destroy foxes or wolves, wherever they can be found,—for they are beasts of prey<sup>37</sup>.

Argument of the solicitor-general in support of Strafford's attainder.

When any of the lords passed, the cry for "justice" against Strafford resounded in their ears; and all those who were suspected to be the personal friends of the prisoner, received menaces of personal violence<sup>38</sup>: and such proceedings were agreeable to the popular party in the House of Commons<sup>39</sup>.

It is to be regretted that these tactics succeeded in intimidating the peers; for although about eighty had attended

Intimidation of the lords.

<sup>34</sup> Whitlocke, 37.

<sup>35</sup> 1 Clarendon, 193.

<sup>36</sup> Ibid. 214. 5 Rushworth, 214.

<sup>38</sup> Ibid. 232, 256. 6 Hume, 410.

<sup>37</sup> 1 Clarendon, 232.

<sup>39</sup> Whitlocke, 43.

**CHARLES I.**  
1625—1649.

A faction is contemptible when opposed with vigour, but becomes formidable if not fearlessly resisted.

Strafford's trial, yet, to their shame and infamy be it recorded, only forty-five were present<sup>40</sup> when the bill of attainder was sent up to the peers,—and of these, nineteen voted against it.

The public calamities which ensued from this period, may be ascribed to the want of manly courage upon the part of the peers, and *from a base dereliction of their parliamentary duties*; for as nothing can be more contemptible than a faction when opposed with vigour, in an inverse ratio does it become formidable when any wavering is perceptible on the part of its opponents, and if the peers had at this moment boldly resisted the puritanical faction, the national disputes would have essentially terminated: in fact, as Dr. Southey<sup>41</sup> observes, “the puritanical members were always at their post, always alert, and on the watch for every occasion; their opponents too often absented themselves from the House, wearied by pertinacity, or disgusted by violence: many fatally persuaded themselves that their individual presence would contribute little to the preservation of government, but advantage was taken of their absence to carry the most mischievous questions: thus a handful of determined rooters, first by address and vigilance, then by intimidation and the help of the mob, succeeded in making parliament speak their language; and many of the best and noblest members sacrificed at last their fortunes and their lives, defending unsuccessfully in the field that cause which, if they had never relaxed from their duty in the senate, would never have been brought to the decision of arms.”

Intimidation of  
the king.

The recreant spirit of the peers emboldened the commons to greater aggressions, and the populace were incited to pursue the same infamous conduct of intimidation towards their sovereign as they had done towards the lords, and accordingly they demanded “justice” against Strafford with the loudest clamours, and most open menaces: rumours of conspiracies against the parliament, invasions, and insurrections, were industriously circulated, so as to excite the people, and to make it apparent that, if the royal assent were withheld, some great and imminent convulsion would be the result<sup>42</sup>.

Such a state of things, combined with the intercessions c

<sup>40</sup> Whitlocke, 43.

<sup>41</sup> Book of the Church, 460.

<sup>42</sup> Vide etiam Trial of Archbishop Laud. 6 Rushworth, 830, et seq. Warwick, 160.

the queen, and the magnanimous letter of Strafford, extorted a disgraceful, but an unwilling, assent<sup>43</sup> from Charles for the execution of the earl, and that assent rendered the king miserable for the remainder of his days. In fact, Charles always believed Strafford to be an innocent and persecuted man; nevertheless he selfishly sacrificed his best friend and minister in order to pacify parliamentary resentment, so that he himself might be released from those embarrassments with which he was encompassed, but which the tyranny of the crown had itself produced: the king, however, early experienced that, every concession made to faction and violence produced the unerring effect of entailing fresh demands, each more unreasonable and degrading than the last.

So little regard was paid to the constitution in 1641, that attempts were made by the commons alone to assume sovereign executive powers, and publishing their "ordinances" instead of "laws;" and previous to the king's departure for Scotland, endeavours were made to have a "Protector" appointed, with a power to pass laws without having recourse to the king: but being unsuccessful, a committee of both Houses was appointed to attend the king into Scotland, to discharge the honorable office of "spies"<sup>44</sup>.

The commons were however determined to destroy the sovereign authority; and the rebellious state of Scotland and Ireland aided their wishes: and under pretence of subduing the latter kingdom, they levied money, which they secretly appropriated to other purposes; they took arms from the king's magazines, which they kept with a secret intention of employing against himself; and whatever laws they deemed necessary to strengthen themselves, were voted under colour of enabling them to recover Ireland.

A remonstrance was prepared, intituled an "Appeal to the People;" and whatever unfortunate, invidious, or suspicious measure had ever been embraced by the king, and for which effectual remedies had now been provided, was aggravated with acrimonious rhetoric, accompanied with jealous prognostications of the future; but such was its false and inflammatory character, that it was only carried by a majority of

CHARLES I.  
1625—1649.

Execution of  
Strafford.

Attempts by the  
commons to  
assume the exe-  
cutive power.

Offensive and de-  
fensive prepara-  
tions by the  
commons.

The remon-  
strance, intituled  
an "Appeal to  
the People."

<sup>43</sup> 2 Strafford Papers, 432. 1 Clarendon, 257. Laud's Troubles, 177. Warwick, 160.

<sup>44</sup> 5 Rushworth, 376. 6 Hume, 423.

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1625—1649.

eleven<sup>45</sup>, and was afterwards printed and published, without being carried up to the House of Peers for their assent and concurrence.

Persecution of  
the bishops.

Although the bill for depriving the bishops of their legislative function had been rejected by the peers, and no prorogation had subsequently occurred, another bill of a similar nature was sent up, and the commons and their harpies availed themselves of every opportunity to display their upstart insolence and illegal threats towards the lords, being aware that the constitution could not be destroyed, as long as that assembly maintained its essential rights.

Anxiety of the  
commons to de-  
stroy the House  
of Lords.  
December 3, 1641.

Influenced by these principles, the commons made the following entry in their Journals:—"This committee is appointed to prepare heads for a conference with the lords, and to acquaint them what bills this House hath passed and sent up to their lordships, which much concern the safety of the kingdom, but have had no consent of their lordships unto them; and that this House being the representative body of the whole kingdom, and their lordships being but as particular persons, and coming to parliament in a particular capacity, that if they shall not be pleased to consent to the passing of those acts and others necessary to the preservation and safety of the kingdom, that then this House, together with such of the lords that are more sensible of the safety of the kingdom, may join together, and represent the same unto his majesty." This served as a basis to found the resolution of February, 1649, declaring the House of Lords useless.

Privilege of par-  
liament. Janu-  
ary 27, 1642.

The commons, in order to show their respect for "privilege of parliament," impeached the Duke of Richmond, because he had merely said in the House of Lords, on a motion to adjourn, "Why should we not adjourn for six months?" This proceeding is an illustration of "liberty of speech" when defined by a ruthless democracy.

The more popular members of the commons conceived that to destroy the bishops, and in which they ultimately succeeded, no art was too mean, no expedient too base, and therefore conciliated the vilest of mankind, under the hypocritical veil of "liberty and equality," so as to make them their slavish instruments; and thus by their miserable howls and

<sup>45</sup> Whitlocke, 49. Dugdale, 71. 2 Nalson, 668.

more hellish threats, to intimidate the judgments of their sovereign and the peers, as a means to work their ultimate destruction: but the sequel will illustrate that "your levellers will always level down to themselves, but will never level up to themselves."

Tumultuous congregations, and seditious excitement of the people by artful harangues, were encouraged. Petitions, under pretence of seeking redress of public grievances, were drawn by the leaders of the popular party for the purpose of disseminating treason, libels, and every other inflammatory matter, and when a sufficient number of signatures were procured, the petitions were presented to parliament, and then published; so that these petitions became secret bonds of association amongst the subscribers, and seemingly acquired parliamentary sanction to the complaints which they contained <sup>46</sup>.

Petitions were presented by the city apprentices<sup>47</sup>, porters<sup>48</sup>, and beggars<sup>49</sup>, containing "erudite discussions" upon the privileges of parliament, the danger of religion, the rebellion of Ireland, and the decay of trade.

The "porters" desired, "that justice might be done upon offenders as the atrociousness of their crimes had deserved, and that if such remedies were any longer suspended, they should be forced to extremities not fit to be named, and make good the saying, 'that necessity has no law'<sup>50</sup>."

The "beggars" proposed, as a specific for public miseries, "that those noble worthies of the House of Peers, who concur with the happy votes of the commons, may separate themselves from the rest, and sit and vote as one entire body;" *for which the commons returned thanks*<sup>51</sup>.

And, as a *coup de grace*, several thousands of females, all of whom had "*had their misfortunes*," personally presented a petition to the commons, expressing their terror of papists and prelates, and their dread of being massacred and ravished; upon which Pym came to the door of the House, stating that their petition was thankfully accepted, was presented in a seasonable time, and begged that their prayers for the success of the commons might follow their petition<sup>52</sup>.

It was thus that Pym, by a course of dishonourable, mean,

CHARLES I.  
1625—1649.

Seditious petitions to parliament.

From the city apprentices, porters, and beggars.

The pitiable situation of several thousands of females.

<sup>46</sup> 1 Clarendon, 203.    <sup>48</sup> Hume, 376, 379.

<sup>47</sup> 5 Rushworth, 462.    <sup>49</sup> Dugdale, 87.    2 Clarendon, 412.

<sup>49</sup> Ibid. 413.

<sup>50</sup> Ibid. 412.

<sup>51</sup> Ibid. 413.

<sup>52</sup> 6 Hume, 175, 476.



CHARLES I.  
1625—1649.

Petitions favourable to church and monarchy.

and hypocritical truckling to the pitiable dregs of society, was enabled to attain the "bad eminence" he ultimately enjoyed.

All petitions which favoured the church or monarchy were discouraged, and the petitioners sent for, imprisoned and prosecuted as delinquents; which conduct was openly avowed and justified<sup>53</sup>; not but that the petitioners had the same measure of justice dealt them, as those members of the minority of the House of Commons who dared to express an opinion against the yeilded cause of "liberty," who, when they did do so, as in the cases of Mr. Palmer and Sir Ralph Hopton, were committed to prison.

Reports of insurrections, invasions, and conspiracies.

Reports of insurrections, invasions, and conspiracies, were incessantly circulated; and because a tailor informed the commons that, walking in the fields, he had hearkened to the discourse of certain persons unknown to him, and had heard them talk of a most dangerous conspiracy,—orders were issued for seizing all priests and jesuits,—a conference was desired with the lords,—and deputy-lieutenants of counties were ordered to put the people in a posture of defence<sup>54</sup>. Upon another occasion, Sir William Earl having given information of some "dangerous words," spoken by "certain persons," the speaker was ordered to issue a warrant to apprehend such persons as Sir William Earl should point out<sup>55</sup>.

The rank and intelligence of the country intimidated.

The commons had now attained their ends: they had intimidated the rank and intelligence of the country, the populace without doors were ready to execute from the least hint the will of their leaders, nor was it safe for any member to approach either House who pretended to contest or oppose the general torrent; and, as illustrative of the protection given to those who perpetrated acts of outrage, the commons committed a magistrate to the Tower, because he had, with the sheriffs and other justices, stationed watches to protect the obnoxious members,—and those who had been committed for breaches of the peace, received their liberty by order of the House<sup>56</sup>.

After so undisguised a manner was violence conducted, that Hollis, in a speech to the peers, desired to know the names of such members as should vote contrary to the sentiments of the

<sup>53</sup> 2 Clarendon, 449.

<sup>54</sup> 2 Nalson, 646. Com. Journ. November 16, 1641. Dugdale 77.

<sup>55</sup> Com. Journ. December 10, 1641.

<sup>56</sup> 2 Nalson, 784, 792. Com. Journ. December 27, 28, 29, 1641.

commons<sup>57</sup>; and Pym said in the Lower House, "that the people must not be restrained in the expression of their just desires<sup>58</sup>."

CHARLES I.  
1625—1649.

IMPEACHMENT  
OF THE BISHOPS.

But this was a principle which he had not permitted the "people" to extend to the clergy:—thus when the bishops drew up a protest addressed to the king and the House of Lords, stating that they had been assaulted by the unruly multitude, and could no longer with safety attend their duty in the House, and therefore protested against all laws, votes, and resolutions, as null and invalid, which should pass during the time of their constrained absence, they were by the commons instantly impeached for high-treason in endeavouring to subvert the fundamental laws, and to invalidate the authority of the legislature; upon which they were sequestered from parliament, and committed to custody<sup>59</sup>,—no person in either House daring to speak in their vindication. In truth, such was the state of intimidation, that no further opposition was made to the bill against the votes of the bishops in parliament, nor any other bill which was presented.

The fact was, that the bishops of the Anglican church would not basely condescend to assist the "root-and-branch men" in blowing the trumpet of rebellion, but in which the puritanical clergy were perfect adepts, and who ultimately assumed the most dangerous power of the Roman Catholic priesthood, and inflicted upon the consciences of their fellow-creatures a yoke tenfold heavier than that of which they had complained as intolerable.

The bishops would not condescend to blow the trumpet of rebellion.

Indulgence for tender consciences was their matin and their evening prayer; but rather than wear the surplice, use the sign of the cross in baptism, kneel at the sacrament, and bow at the name of their Redeemer, they excited a civil war; and complained of the king for not putting to death the Romish priests who were in prison,—and the Romanists were compelled to perform their worship at midnight, and that always in fear and danger.

Indulgence for tender consciences.

They passed an ordinance, by which eight heresies were made punishable with death upon the first offence, unless the offender abjured his errors, and irremissibly if he relapsed.

Heresies punishable with death.

<sup>57</sup> King's Decl. August 12, 1642. 6 Hume, 477.

<sup>58</sup> Ibid.

<sup>59</sup> 5 Rushworth, 466. 2 Nelson, 794. Whitlocke, 51.

CHARLES I.  
1625—1649.

Sixteen other opinions were to be punished with imprisonment, till the offender should find sureties that he would maintain them no more. Among these were, the belief in purgatory, the opinion that God might be worshipped in pictures or images, free will, universal restitution, and the sleep of the soul. Their laws, also, for the suppression of immorality, were written in blood<sup>60</sup>.

Improper treatment of the Anglican clergy.

The clerical members of the Anglican church who were only plundered and turned out to find subsistence for their wives and families as they could, or to starve, were fortunate when compared with many of their brethren. Some were actually murdered<sup>61</sup>; others perished in consequence of brutal usage, or of confinement in close, unwholesome prisons, or on ship-board, where they were crowded together under hatches<sup>62</sup>, day and night, without even straw to lie on. An intention was avowed of selling them as slaves to the plantations<sup>63</sup>, or to the Turks and Algerines; and though this was not carried into effect, it seems to have been more than a threat for the purpose of extorting large ransoms from those who could raise money; because, after the battle of Worcester, many of the prisoners were actually shipped for Barbadoes, and sold there<sup>64</sup>.

The benefits which arose from the abolition of episcopal jurisdiction.

When the episcopal jurisdiction had been abolished, and all its rights and possessions confiscated, the philanthropic puritanical clergy shared the spoils among themselves and their adherents. Thus—"Setting sail to all winds that might blow gain into their covetous bosoms," many respectively held at the same time masterships in the university, lectureships in the city, and one, two, or more of the best livings, from which the lawful incumbents had been turned out with their families to starve; and these were the men who had hypocritically and treasonably declaimed against the wealth and power of the bishops, and annihilated religion. But no sentiment save that of the "meanest of the mean," ever found refuge in the breasts of these puritanical ministers; and "contemptible and loathsome cant" supplied the place of true religion, as illustrated by their abolishing Maypoles, and prohibiting servants and children from walking in the fields on the Sab-

<sup>60</sup> Southey's Book of the Church, 508.

<sup>61</sup> Walker, part ii. 71.

<sup>62</sup> Ibid. 146.

Ibid. 58, 1.

<sup>64</sup> Southey's Book of the Church, 475.

bath-day; but in truth, puritanical religious professions resembled the little eruptive pustule on the surface which betrays the infection and putridity at the core.

CHARLES I.  
1625—1649.

Numerous proofs exist of the "Christian disposition" of the puritans, such as, in some churches, baptizing horses or swine, in profane mockery of baptism; in other churches breaking open the tombs, and scattering about the bones of the dead, or, if the bodies were entire, defacing and dismembering them<sup>65</sup>. At Sudeley they made a slaughter-house of the chancel, cut up the carcasses upon the communion table, and threw the garbage into the vault of the Chandoses, insulting thus the remains of some of the most heroic men, who, in their day, defended and did honour to their country. At Westminster, the soldiers sate smoking and drinking at the altar, and lived in the abbey, committing every kind of indecency there, which the parliament saw and permitted. No cathedral escaped without some injury; painted windows were broken, statues pulled down or mutilated, carvings demolished, the organs sold piecemeal for the value of the materials, or set up in taverns. At Lambeth, Parker's monument was thrown down, that Scott, to whom the palace had been allotted for his portion of the spoils, might convert the chapel into a hall; the archbishop's body was taken, not out of his grave alone, but out of his coffin, the lead in which it had been enclosed was sold, and the remains were buried in a dunghill<sup>66</sup>.

Puritanical  
Christian  
charity.

Under the puritans, controversy and intrigue usurped the place of pure religion; and innorality and wickedness of all kinds everywhere abounded; licentiousness, oppression, pride, covetousness, and a secret hatred of all religion, was widely disseminated amongst the nation. And these are forcible and practical illustrations of the "miseries" which the nation encountered from the temporary subversion of the English Catholic church.

Under the puritans, controversy and intrigue usurped the place of pure religion.

These proceedings convinced every person that further to support the commons was only to consummate the annihilation of the crown, the church, and the peerage, and that all who entertained opinions opposed to their selfish and interested caprices, were treated as a proscribed caste, and that liberty, law, and justice had ceased to exist.

<sup>65</sup> Southey's Book of the Church, 472, 473.

<sup>66</sup> Southey, 473. Strype's Parker, 499.

**CHARLES I.  
1625—1649.**

**TREASONABLE  
ACTS OF THE  
COMMONS.**

Possession of the  
sword sought  
after by the  
commons.

Persecution of  
the king.

Command of the  
army assumed  
by the commons.

Propositions  
tendered to the  
king at York.

The measure upon which the commons rested all future hopes of uncontrollable ascendancy was by a bold and decisive stroke, to seize at once the whole power of the sword, and to confer it entirely on their own creatures and adherents.

A bill for regulating the militia was introduced, and passed the two Houses, restoring to lieutenants and deputies the same powers of which the votes of the commons had bereaved them; but nominating in the bill the lords-lieutenant in every county, who were to obey the orders of the two Houses, and to be irremovable by the king for two years.

However reprehensible the conduct of the king might have been, he had suffered a more than commensurate punishment; his favourite ministers had been either executed, banished, or imprisoned; almost all the just prerogatives of the crown had been destroyed; he had been forced to extinguish one estate of parliament; had been causelessly insulted by the commons upon various occasions; they had forced his queen to become an exile, and were now desirous to become his gaolers, at a time when he was unable to trample upon public or private rights. But Charles, desirous to conciliate, offered his consent to the bill, if the persons recommended to him as lieutenants were to be appointed by commissions revocable at his pleasure, or rendering them irremovable for one year, provided they received their orders from himself and the two Houses jointly<sup>67</sup>, which proposals being refused, the king withheld his assent.

The commons then framed an ordinance, in which, by the sole authority of the two Houses, lieutenants were named for all the counties, and the command of the whole military force, guards, garrisons, and forts of the kingdom, were conferred on them, with commands that they were only to obey the orders of his majesty, "as signified by both houses of parliament." The king issued counter proclamations, and the adherents of each party arranged themselves under their respective banners, to decide the question by the sword.

In the beginning of June, 1642, the commons, to show that their determination was to destroy the executive authority of the crown, tendered to him, at York, nineteen propositions, founded upon addresses and declarations of an earlier date. They required that the privy council and officers of state should be approved by parliament, and take such an oath as

<sup>67</sup> 2 Clarendon, 375. 2 Parl. Hist. 1077, 1106, &c.

the two Houses should prescribe, and that during the intervals of parliament, no vacancy in the council should be supplied without the assent of the major part, subject to the future sanction of the two Houses; that the education and marriages of the king's children should be under parliamentary control; the votes of popish peers to be taken away; the church government and liturgy be reformed as both Houses should advise; the militia and all fortified places put in such hands as parliament should approve; finally, that the king should pass a bill for restraining all peers to be made in future from sitting in parliament, unless they be admitted with the consent of both Houses.

CHARLES I.  
1625—1649.

In addition to these demands, the commons voted that in a right construction of the old coronation oath, the king was bound to assent to all bills which the two houses of parliament should offer<sup>68</sup>.

The crown bound to assent to all bills offered by parliament.

Charles, from having no party in the nation, had, by his concessions to the parliament, acquired a powerful party; and, notwithstanding the small interval of time which had elapsed from his rash attempt to seize the six members<sup>69</sup>, he was surrounded by the nobility and gentry, who conceived that law, justice, and moderation now belonged to the crown, the commons having perpetrated so many acts of deliberative violence.

Popularity of Charles I.

The friends of the constitution were resolved to adhere to that moderate freedom transmitted them from their ancestors, and now better secured by such important concessions, rather than by engaging in a giddy search after more independence, run a manifest risk either of incurring a cruel subjection, or abandoning all law and order; they were further induced to this determination by the fact of the city apprentices, porters, &c., having been allowed to influence the decisions of the legislature, and were aware that the moment the licentious appetites of such people ceased to be gratified, physical strength could alone reduce them to proper subjection<sup>70</sup>.

Motives by which the royalists were actuated.

<sup>68</sup> 1 Clarendon, 452. 2 Parl. Hist. 1302. 2 Hallam's Const. Hist. 188.

<sup>69</sup> 2 Rushworth, 473. Whitlocke, 50. 2 Nelson, 811. Franklyn, 906.

<sup>70</sup> Those who have once bowed their knee to force, must expect that force will be for ever their master. In a few weeks after the legislative power and civil government of England had submitted to the army, the commons were insulted by an unruly, tumultuous mob of apprentices, engaged in the presbyterian politics of the city, who compelled them, by actual violence, to rescind several of their late votes. (2 Hallam's Const. Hist. 281.)

CHARLES I.  
1626—1649.

A. D. 1642.

Declaration of  
the king to the  
peers.

The king made a declaration to the peers who attended him, that he expected from them no obedience to any commands which were not warranted by the laws of the land. The peers answered this declaration by a protest, in which they declared their resolution to obey no commands but such as were warranted by their authority<sup>71</sup>.

In fact, the rank, intelligence, and property of the country rallied round the crown, and to such an extent, that, according to Clarendon's computation, a single troop of guards possessed estates and revenues equal to those of all the members, who, at the commencement of the war, voted in both Houses<sup>72</sup>.

At this period the House of Lords seldom consisted of more than sixteen members, and near the moiety of the commons absented themselves from counsels which they conceived so replete with danger; and the great majority of those who did attend were under the influence of intimidation. A band of rogues and rebels, who had everything to gain and nothing to lose, now influenced the commons, and by audacious falsehoods, persuaded the uncultivated and seditious masses of society, that they were the eternal guardians of law and liberty, and whom no motive, but the necessary defence of the people, could ever engage in an opposition to the crown. The king's adherents were by the commons designated "wicked," and "malignant." Their adversaries were the "godly," and "well affected<sup>73</sup>;" and in the orders which Essex received to advance upon the royalists, he was directed to "present a most humble petition to the king, and to rescue him and the royal family from those desperate malignants who had seized their persons<sup>74 75</sup>."

In fact, the House of Commons "was a close committee of sordid tyrants, who violated every principle of law and justice, who imprisoned their own constituents for refusing to answer

<sup>71</sup> 6 Hume, 491.

<sup>72</sup> 3 Clarendon, 41. Warwick, 231.

<sup>73</sup> Warwick, 318. May, 86.

<sup>74</sup> Whitlocke, 59. 3 Clarendon, 27, 28.

<sup>75</sup> This mean, false, and hypocritical conduct was pursued during the war in their treatment of the House of Lords, to whom the commons, upon all occasions, gave respectful language, and denounced those who advocated their suppression; and on occasion of some rumours, the House voted they held themselves obliged, by the fundamental laws of the kingdom and their covenant, to preserve the peerage, with the rights and privileges belonging to the House of Peers, equally with their own (3 Parl. Hist. 369); and the council of war more than once, in the year 1647, declared their intention of preserving the rights of the peerage. (Whitlocke, 298. Sir William Waller's Vindication, 192.)

Non attendance  
of the members  
of the Houses of  
Lords and Com-  
mons.

Character of the  
House of Com-  
mons.

criminating interrogatories which no judge in England would have dared to ask, or have permitted to be put; who, professing hostility to corruption, could deal secretly for the whitewashing of the blasted character, or replenishing the empty purse of an useful associate; who, in a word, with 'patriotism' for ever in their mouths, went to deluge their country with civil blood, and hack and mutilate the constitution which they swore they were defending, till it fell prostrate and lifeless at the feet of a military usurper." But such is "civil liberty," when administered by the "devoted friends of the people," uncontrolled by a king and an hereditary House of Peers.

CHARLES I.  
1625—1649.

Civil liberty,  
when administered by the  
"devoted friends  
of the people."

### SECTION III.

CHARLES II., January 30, A.D. 1649,—February 6, A.D. 1685.

- |                                            |                                                                          |
|--------------------------------------------|--------------------------------------------------------------------------|
| 1. The Misfortunes of Anarchy.             | 11. Original Jurisdiction in Civil Causes claimed by the House of Lords. |
| 2. Lenient Proceedings at the Restoration. | 12. Impeachment of Danby.                                                |
| 3. Grant of Royal Revenues.                | 13. Appropriation of Supplies.                                           |
| 4. Disbanding the Army.                    | 14. Administration of Justice.                                           |
| 5. Titles to Property.                     | 15. Habeas Corpus Act.                                                   |
| 6. The Parliament of 1661.                 | 16. Quo Warranto Informations.                                           |
| 7. Punishment of the Regicides.            | 17. Attempts to create an Absolute Monarchy.                             |
| 8. The Corporation Act.                    |                                                                          |
| 9. The Triennial Act.                      |                                                                          |
| 10. Religious Dissensions.                 |                                                                          |

#### 1. *The Misfortunes of Anarchy.*

Whoever has power, abuses it; every page of history proves the fact; individual, body, the people, it is all the same; power is abused, yet some one, or some body, must have it. The great problem seems to be to vest it in such a manner that as little mischief can be done as possible. But to effect this, something very different is necessary from merely clipping the wings of power. Injudicious restraint of power leads to as many evil consequences as unlimited power<sup>1</sup>.

The histories of Greece, Rome, and France, justify the observation, that although with the multitude ultra democracy may often originate in the love of true liberty, it has its source, almost always, in those who seek to be leaders of the multitude, merely in an insatiable thirst for power, which is generally followed by the abuse of it when acquired.

CHARLES II.  
1649—1685.

Whoever has  
power, abuses it.

Popular leaders  
actuated by  
ambition.



CHARLES II.  
1649—1685.

The people are  
always the suffer-  
ers by revolu-  
tions in govern-  
ment.

The events which occurred immediately previous, and subsequent to the execution of Charles I., establish that, practically speaking, "the people are always the sufferers by revolutions in government;" because the new settlement, being jealous and insecure, is, *ex necessitate*, supported by unconstitutional criminal process<sup>2</sup>, and by the most grievous taxation<sup>3</sup>; in

<sup>2</sup> The protector, in the capital punishment of Gerard and Vowel, two royalists, who were accused of conspiring against his life, erected a high court of justice for this trial, an infringement of the ancient laws, which at this time was become familiar (7 Hume, 237, 238). Juries were found altogether unmanageable, and if no other method had been devised during this illegal and unpopular government, all its enemies were assured of entire impunity (Ibid.).

<sup>3</sup> The country not only complained of the amount of taxation, but of the mode by which it was levied, and its corrupt appropriation. The sum of 300,000*l.* was openly taken and divided among the members (Clement Walker's Hist. of Independency, iii. 116). Committees, to whom the management of the different branches of revenue was entrusted, never brought in their accounts, and had unlimited power of secreting whatever sums they pleased from the public treasurer (Ibid. 8). These branches were needlessly multiplied, in order to render the revenue more intricate, to share the advantages among greater numbers, and to conceal the frauds of which they were universally suspected (Ibid. 7 Hume, 92. 19 Parl. Hist. 136, 176). The Protector, with his council, imposed a duty upon merchandise (the doing of which had been the principal offence of Charles I.), payment of which was refused by a person of the name of Cony, but, being levied by distress, an action was instituted against the collector. But Cromwell, in order to prevent the question being discussed, sent the plaintiff's three counsel to the Tower, and did not release them until they had abandoned their client.

Sir Peter Wentworth having also commenced an action of a similar cause, was summoned before the council, and asked if he would give it up. "If you command me," he replied to Cromwell, "I must submit," which the protector did, and the action was withdrawn (Ludlow, 528). Clarendon relates the same story, with additional circumstances of Cromwell's audacious contempt for the courts of justice, and for the very name of Magna Charta (2 Hallam's Const. Hist. 342).

So enormous were the charges of the commonwealth, arising from continual wars by sea or land, that questions of finance continually engaged the attention of the House. There were four principal sources of revenue; the customs, the excise, the sale of fee-farm rents (the clear annual income from the fee-farm rents amounted to 77,000*l.* In 1651, 25,300*l.* of this income had been sold for 225,650*l.* Com. Journ. Jan. 8) of the lands of the crown, and of those belonging to the bishops, deans, and chapters, and the sequestration and forfeiture of the estates of papists and delinquents. The ordinances for the latter had been passed as early as the year 1643, and in the course of the following succeeding years, the harvest had been reaped and gathered. Still some gleanings might remain; and in 1650, an act was passed for the better ordering and managing such estates; the former compositions were subjected to examination; defects and concealments were detected; and proportionate fines were in numerous cases exacted. In 1651, seventy individuals, most of them of high rank, all of opulent fortunes, who had imprudently displayed their attachment to the royal cause, were condemned to forfeit their property, both real and personal, for the

truth, the people were made to exult in that power by which they were kept in subjection, to regard their own glory as involved in that of their protector, and their own debasement and servitude as compensated by the almost absolute nature of his government.

CHARLES II.  
1649—1685.

The ravages of the civil war had been such, that all classes had to mourn for the loss of a relative or friend, or, by the illegal sequestration of their estates<sup>4</sup>, had been reduced from affluence to poverty.

The people discovered that republican liberty was associated with uncompromising tyranny—the selfish rapacity of the Rump—the hypocritical despotism of the soldiers of a commonwealth—the rejection of members returned to serve in parliament<sup>5</sup>—the arbitrary sequestration of committee-men

Republican  
liberty asso-  
ciated with un-  
compromising  
tyranny.

benefit of the commonwealth. The fatal march of Charles to Worcester furnished grounds for a new proscription in 1652. First, nine-and-twenty, then six hundred and eighty-two, royalists were selected for punishment. It was enacted that those in the first class should forfeit their whole property, while to those in the second the right of pre-emption was reserved at the rate of one-third part of the clear value, to be paid within four months. (*Com. Journ.* July 16, 1651; Aug. 4; Nov. 18, 1652. *Scobell*, 156, 210. 7 *Lingard*, 136, 137). If any of the last were papists, and afterwards disposed of their estates which they may have redeemed, they were ordered to banish themselves from their native country, under the penalty of having the laws against popery executed against them with the utmost severity. (*Addit. Act of Nov. 18, 1652.*)

<sup>4</sup> One of their most iniquitous acts was the sale of the Earl of Craven's estate. He had been out of England during the war, and could not therefore be reckoned a delinquent. But evidence was offered that he had seen the king in Holland; and upon this charge, though he petitioned to be heard, and, as is said, indicted the informer for perjury, whereof he was convicted, they voted by thirty-three to thirty-one that his lands should be sold, Haslerig, the most savage zealot of the whole faction, being a teller for the ayes, Vane for the noes (*Com. Journ.* March 6, 1651, and June 22, 1652. 5 *State Trials*, 323). On the 20th July, in the same year, it was referred to a committee to select thirty delinquents, whose estates should be sold for the use of the navy. Thus long after the cessation of hostility, the royalists continued to stand in jeopardy, not only collectively, but personally, from this arbitrary and vindictive faction. Nor were these qualities displayed against the royalists alone; one Josiah Primatt, who seems to have been connected with Lilburne, Wildman, and the levellers, having presented a petition complaining that Sir Arthur Haslerig had violently dispossessed him of some collieries, the House, after voting every part of the petition to be false, adjudged him to pay a fine of 3000*l.* to the commonwealth, 2000*l.* to Haslerig, and 2000*l.* more to the commissioners for compositions (*Com. Journ.* Jan. 15, 1651—2. 2 *Hallam's Const. Hist.*, 325).

<sup>5</sup> Upon Dec. 6, 1648, the parliament having voted, by a majority of 129 against 83, that the king's concessions should be a foundation for the Houses to proceed upon in the settlement of the kingdom, adjourned to the next day: but when the commons were to meet, Colonel Pride, formerly a dray-

CHARLES II.  
1649—1685.

Sale of British  
citizens for  
slavery.

—the iniquitous decimations of military prefects<sup>6</sup>—the sale of British citizens for slavery in the West Indies<sup>7</sup>—the blood of some shed on the scaffold without legal trial—the tedious imprisonment of many, with denial of the writ of habeas corpus<sup>8</sup>—the exclusion of the ancient gentry—the persecution of the Anglican church—the bacchanalian rant of sectaries—the morose preciseness of puritans<sup>9</sup>—the extinction of the frank

man, had environed the House with two regiments, and seized in the passage forty-one members of the presbyterian party, and sent them to a low room, which passed by the appellation of Hell, whence they were afterwards carried to several inns. Above one hundred and sixty members more were excluded; and none were allowed to enter but the most furious and most determined of the independents, and these exceeded not the number of fifty or sixty. The House then proceeded to rescind its former vote, and declared the king's concessions unsatisfactory (7 Hume, 131, 132. Vide etiam Com. Journ. Feb. 1, 1649. Walker, ii. 115. Whitlocke, 376, 554, 610, 618. 2 Ludlow, 19, 23, 115—123. Leicester's Journal, 139. Hutchinson, 332. 3 Burton's Diary, 89. Milton's State Papers, 90—97. 3 Ellis, Second Series, 368. Com. Journ. January 19, 20, 22, 1655. 1 Thurloe, 750. 5 Ibid, 269, 317, 328, 9, 337, 341, 3, 9, 371, 383, 424. 5 State Trials, 791. Com. Journ. Sept. 19, 1656. 7 Lingard, 131, 221, 254).

<sup>6</sup> An edict was issued by Cromwell and his council, to levy the tenth penny from the royalists, to pay the expenses of their "mutiny," and obliged them anew to redeem themselves by great sums of money by which most of them were reduced to poverty (7 Hume, 244.)

In order to raise these impositions, which commonly passed by the name of "decimation," the protector instituted twelve major-generals, and divided England into so many military jurisdictions (20 Parl. Hist. 433). These men, assisted by commissioners, had power to subject whom they pleased to "decimation;" levy all the taxes imposed by the "protector" and his "council," and to imprison any person who should be exposed to their jealousy or suspicion; nor was there any appeal from them but to the protector himself and his council. Under colour of these powers, the major-generals exercised an absolute authority over the property and persons of every subject.

"The major-generals," says Ludlow, "carried things with unheard-of insolence in their several precincts, decimating to extremity whom they pleased, and interrupting the proceedings at law upon petitions of those who pretended themselves aggrieved; threatening such as would not yield a ready submission to their orders with transportation to Jamaica, or some other plantations in the West Indies," &c. (P. 559. 2 Hallam's Const. Hist. 340).

<sup>7</sup> 2 Hallam's Const. Hist. 342. 7 Hume, 243.

<sup>8</sup> In 1649, the power of imprisonment, of which the Petition of Right had bereaved the king, was repeated in favour of the council of state, and all the gaols in England were filled with men whom the jealousies and fears of the ruling party had represented as dangerous (Clement Walker's Hist. of Independency, II. 136, 176. Et vide etiam 5 State Trials, 415—450. Com. Journ. July 13, 1 4, August 2, 22, 27, November 26, 1653. Exact Relation, 5. Whitlocke, 558, 560, 1, 3, 591. 1 Thurloe, 324, 367 et seq.

<sup>9</sup> They enforced the principles of virtue to such an extent as to enact laws declaring fornication, after the first act, to be felony without benefit of

and cordial joyousness of the national character; in fact, the country had experienced the acme of misery and degradation<sup>10</sup>; a base populace had been exalted above their superiors, and hypocrites exercised iniquity under the vizard of religion. The tide soon turned in favour of the monarchy, and the royalists became the governing party; men strove by their services to compensate their former disaffection; and, in proportion to the severity with which they had treated the father, they were warm in their professions of attachment and loyalty to the son, and hailed his restoration as a national blessing<sup>11</sup>.

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1649—1685.

The restoration  
of monarchy  
hailed as a  
national blessing.

clergy (Scobel, 121. 7 Hume, 163); and it was also intended that the Mosaical Law should be established as the sole system of English jurisprudence. (Exact Relation, 17. 7 Hume, 186. 7 Lingard, 151.)

<sup>10</sup> Upon a new parliament being summoned in 1656, Cromwell had not been enabled to secure a majority; he therefore forcibly prevented ninety members, who had been duly returned by their constituents, from taking their seats, under pretext of immorality, or delinquency (5 Thurloe, 269, 137, 328, 9, 337, 341, 3, 9, 424). It appears from the Journals of the 22nd Sept. on a letter to the speaker from the members who had been refused admittance at the door of the lobby, (Sept. 18.) the House ordered the clerk of the commonwealth to attend next day, with all the indentures. The deputy clerk came accordingly, with an excuse for his principal, and brought the indentures; but on being asked why the names of certain members were not returned to the House, answered that he had no certificate of approbation for them. The House on this sent to inquire of the council why these members had not been approved. They returned for answer, that, whereas it is ordained, by a clause in the instrument of government, that the persons who shall be elected to serve in parliament, shall be such and no other than such as are persons of known integrity, fearing God, and of good conversation; that the council, in pursuance of their duty, and according to the trust reposed in them, have examined the said returns, and have not refused to approve any who have appeared to them to be persons of integrity, fearing God, and of good conversation; and those who are not approved, his Highness hath given orders to some persons to take care that they do not come into the House. Upon this answer, an adjournment was proposed, but lost by 115 to 80; and it being moved that the persons, who have been returned from the several counties, cities, and boroughs, to serve in this parliament, and have not been approved, be referred to the council for approbation, and that the House do proceed with the great affairs of the nation, the question was carried by 125 to 29 (7 Hume, 268. 2 Hallam's Const. Hist. 345). The last effort for liberty by the rump parliament was a proposed resolution, that those who had been on the king's side, or *their sons*, should be disabled from voting at elections, which was lost by 93 to 56.

<sup>11</sup> Whitlocke, 702. 2 Evelyn's Diary, 148. Kennet's Reg. 163. 3 Clarendon, 772.

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2. *Lenient Proceedings at the Restoration.*

Lenity at the  
Restoration.

The church and the king having been joined in all the late contests, both by those who attacked them, and those who defended them, ecclesiastical interests, resentments, and animosities, came in to the aid of secular, in making the new settlement. Great lenity was shown at the Restoration for past offences, by unexampled and unimitated mercy to particular men. This conduct would have gone far towards restoring the nation to its primitive temper and integrity, "to its old good manners, its old good humour, and its old good nature," if great severity had not been exercised immediately after, in looking forwards, and great rigour used to large bodies of men, which certainly deserves censure, as neither just nor politic.

Distinction be-  
tween moral and  
party justice.

It was not just, because there is a real and wide difference between moral and party justice. The one is founded in reason; the other takes its colour from the passions of men, and is but another name for injustice. Moral justice carries punishment as far as reparation and necessary terror require, —no further; party justice carries it to the full extent of our power, and even to the gorging and sating of our revenge; from whence it follows, that injustice and violence, once begun, must become perpetual in the successive revolutions of parties, as long as these parties exist.

It was not politic, because it contradicted the other measures, taken for quieting the minds of men. It alarmed all the sects anew, confirmed the implacability, and whetted the rancour of some; disappointed and damped a spirit of reconciliation in others; united them in a common hatred to the church; and roused in the church a spirit of intolerance and persecution<sup>1</sup>.

Doctrine of heredi-  
tary right.

Hereditary, indefeasable right, passive obedience, and non-resistance, those corner-stones which are an improper foundation for any superstructure but that of tyranny, were made, even by parliament, the foundation of the monarchy; and all those, who declined an exact and strict conformity to the whole establishment of the church, even to the most minute parts of it, were deprived of the protection, nay, exposed to the prosecution of the state. Thus one part of the nation stood proscribed by the other; the least, indeed, by the

<sup>1</sup> Bolingbroke's Dissert. on Parties, 54, Edin. 1773.

greatest; whereas a little before, the greatest stood proscribed by the least. Roundhead and Cavalier were, in effect, no more. Whig and Tory were not yet in being. The only two apparent parties were those of churchmen and dissenters; and religious differences alone, at this time, maintained the distinction<sup>2</sup>.

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In order to terminate existing controversies, and to bury all seeds of future discord, Charles II., in his declaration from Breda, had promised a general pardon to those who had been guilty of the recent rebellion, saving only such as should be excepted by parliament; and a few days after the king had landed, he published a proclamation, commanding his father's judges to surrender themselves within fourteen days, on pain of being excepted from any pardon or indemnity, either as to their lives or estates; of which concessions some availed themselves<sup>3</sup>.

ACT OF INDEMNITY.

One of the first acts of the convention parliament, was to discuss this question, and upon which a diversity of opinion pervaded that assembly:—"every member having some friend whom he wished to shield from punishment, or some enemy whom he sought to involve in it: considerations of interest or relationship, of friendship or revenge, weighed more than the respective merits of the parties: but the lords, who had suffered greater injuries than the commons, entertained no other feelings, but those of a most sanguinary and revengeful character."

Parliament influenced by considerations of friendship or revenge.

After considerable discussions, parliament enacted<sup>4</sup>, that all injuries and offences against the crown or individuals, arising out of quarrels between political parties since the first of June, 1637, should be pardoned, except as to fifty-one individuals actually concerned in the death of Charles I.:—of Vane and Lambert;—of Lord Monson, Hazlerig, and five others, as far as regarded liberty and property;—of all judges in any high court of justice;—and of Hutchinson, Lenthall, St. John, and sixteen others by name, as to eligibility to hold office, civil, military, or ecclesiastical.

Termination of existing controversies.

With respect to the nineteen regicides who had voluntarily surrendered, it was yielded to the lords that they should be

<sup>2</sup> Bolingbroke's Dissert. on Parties, 61, 62, Edin. 1773.

<sup>3</sup> 5 State Trials, 959. 7 Somers' Tracts, 437. 2 Hallam's Const. Hist. 413—416.

<sup>4</sup> Stat. 12 Charles II. c. 11. Clarendon, 69. 7 Lingard, 363. 7 Hume, 343, 354.

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tried for their lives; and, in return, it was conceded to the commons, that they should not be executed without a subsequent act of parliament to be passed expressly for that purpose.

Five-and-twenty of the original regicides had died previous to the Act of Indemnity, nineteen had absconded from England<sup>5</sup>, and twenty-nine were in custody<sup>6</sup>. The fugitives were attainted by act of parliament<sup>7</sup>, and the prisoners were brought to trial before a special commission, under which they were sentenced to death.

Execution of the  
regicides.

The ten selected to suffer in the first instance were Harrison, Scott, Carew, Jones, Clement, and Scrope, all of whom had signed the royal death warrant; Cook, who had acted as solicitor at the "High Court of Justice;" Axtell and Hacker, who commanded the guard at the royal execution; and Peters, the clergyman: and, in two years afterwards, Barkstead, Corbet, and Okey<sup>8</sup>, who had been delivered up by "the States," where they had absconded for safety, were also executed<sup>9</sup>:—all of whom suffered death with firmness, considering their punishment as "martyrdom."

ADMINISTRATION  
OF JUSTICE.

Notwithstanding the protracted suspension of regular government, the common law and judicial proceedings had, as between man and man in their private relations, experienced no essential change, and the only alteration needed, was the ancient style of process.

### 3. *Grant of Royal Revenues.*

Committee appointed to settle  
a revenue for the  
crown.

The parliament having ascribed the recent national calamities to the parsimonious provision which had been made for the necessities of the crown, appointed a committee to consider of settling such a revenue on his majesty as might

<sup>5</sup> 3 Ludlow, 113—134. Hutchinson's Hist. of Massachusetts Bay. Ezra Styles' Hist. of these "Most Illustrious and Heroic Defenders of Liberty," U. S. 1794.

<sup>6</sup> 7 Lingard, 352, et seq. 2 Hallam's Const. Hist. 44—444.

<sup>7</sup> In the Statute of Attainder, the lords and commons protested against the murder of the king; and declared, "that by the undoubted and fundamental laws of this kingdom, neither the peers of this realm, nor the commons, nor both together, in parliament or out of parliament, nor the people collectively or representatively, nor any other persons whatsoever, ever had, have, hath, or ought to have, any coercive power over the persons of the kings of this realm."

<sup>8</sup> 3 Ludlow, 82. 5 State Trials, 1301—35. 1 Pepys, 252, 8.

<sup>9</sup> 5 Howell's State Trials, 947—1301, 1362. 2 Hallam's Const. Hist. 417.

maintain the splendour and grandeur of his kingly office, and preserve the crown from want, and from being undervalued by his neighbours.

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The committee reported, that the revenue of Charles I., from 1637 to 1641, averaged 900,000*l.*, 200,000*l.* of which had arisen from illegal expedients; upon which the House raised the yearly revenue of Charles II. to 1,200,000*l.*<sup>1</sup>

Revenues of  
Charles I. and II.

Although, from their oppressive nature, the landed proprietors had unceasingly sought to destroy tenures *in capite* and by knight service, yet the crown still possessed the patronage and emoluments of marriages, reliefs, and wardships: but the commons availing themselves of the conciliatory disposition of the king, proposed that the crown should receive an annual income of 100,000*l.* in lieu of the profits of the Court of Wards, &c.

Partial relief  
from feudal  
tenures.

This is the first precedent in which a parliamentary revenue was conferred upon the crown, for surrendering a portion of its prerogative; and, at the same time, there are few statutes which secured national independence or abridged the royal prerogative in so extensive a manner, as that of 12 Charles II. c. 24, by which the Court of Wards was abolished, with all wardships and forfeitures for marriage by reason of tenure, all primer seisins, and fines for alienation, aids, escuages, homages, and tenures by chivalry without exception, save the honorary services of grand sergeanty; converting all such tenures into common socage, and abolishing the rights of purveyance and pre-emption.

Parliamentary  
revenue conferred on the  
crown.

But this statute did not extend to inferior tenures, and although it relieved the lords of manors from the services which they owed to the crown, confirmed to them the services which they claimed from those who held by tenure of copyhold<sup>2</sup>.

Stat. 12 Charles  
II. c. 24, did not  
extend to inferior  
tenures.

Neither would these landed proprietors, who composed the majority in parliament, pay the commutation for their exclusive relief from the feudal services, but voted the produce of one

Politicians seldom actuated  
but by selfish  
ambition.

<sup>1</sup> Com. Journ. Sept. 4, 1660. Pepys' Diary, March 1, 1664. Ralph, 20, 88.

<sup>2</sup> This act is said to have been drawn by L. C. J. Hale (3 Peere Williams, 125); and it provided *inter alia*, that all tenures to be thereafter created by the king, of an estate of inheritance at common law, should be in free and common socage. But there is a proviso, that the act should not extend to prejudice the customs of the city of London, nor of any other city or town; nor Berwick; nor to discharge any apprentice from his apprenticeship: and it has been held, that it does not affect burgage tenure. (Co. Lit. H. & B. 106 (a.) M. and S. Hist. of Boroughs, 1691.



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**1649—1685.**

Introduction of  
the excise.

moiety of the excise,—thus perpetrating an act of gross injustice, by compelling the poor to pay for the relief of the rich; but this is only an additional illustration of the proposition, that politicians are seldom actuated but by “selfish ambition.”

The excise had been introduced by parliament, to liquidate the charges of the war against the king; but was regarded as an unjust tax, and only tolerated under the plea of necessity, and upon a tacit understanding that it should terminate with that necessity.

Parliament had, however, by this commutation for the feudal tenures, voted one moiety to the king, in perpetuity<sup>3</sup>; and, in order to raise the royal revenue to the amount which it had voted, passed three bills, to improve the receipt on wine licenses, to regulate the post-office, and to grant to the king the second moiety of the excise, for his natural life, in full of the yearly settlement of 1,200,000l.<sup>4</sup>

#### 4. *Disbanding the Army.*

Declaration from  
Breda.

Charles, in his declaration from Breda<sup>1</sup>, promised to liquidate the arrears of the army under General Monk, and to retain the officers and men in the royal service, upon the same pay and conditions which they then actually enjoyed.

The nation could not regard but with distrust the existence of the army, which they were still supporting, by monthly assessments of 70,000l. Statutes were accordingly passed, liquidating all their arrears, and the corps disbanded, but in a manner so conciliatory as not to excite mutiny, or public dissatisfaction<sup>2</sup>.

Origin of the  
regular standing  
army.

But Charles, in order to have a ready instrument to effectuate his objects, retained in his service, under the name of “Guards,” General Monk’s regiment, called the Coldstream, one other of horse, and another was formed out of troops brought from Dunkirk, which was the origin of our regular standing army<sup>3</sup>.

<sup>3</sup> Stat. 12 Charles II. c. 24. Com. Journ. May 25, Nov. 8, 19, 21, Dec. 15. 21, 1660. 6 Parl. Hist. 146.

<sup>4</sup> Although the Excise now produces 18,000,000l. per annum, it only then produced 300,000l.

<sup>1</sup> 11 Lords’ Journ. 7, 10.

<sup>2</sup> Stat. 12 Charles II. cc. 9, 15, 16, 21. Clarendon, 10, 11. 1 Burr 274. 7 Lingard, 352.

<sup>3</sup> Ralph, 35. Life of James, 417. 1 Grose’s Military Antiquities, 61. Hallam’s Const. Hist. 427.

5. *Titles to Property.*

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It had been the policy of Cromwell to confiscate the estates of the royalists, and bestow them upon his adherents, in order to create a party that would possess a positive interest in opposing the restoration of the Stuarts.

Charles, in his declaration from Breda<sup>1</sup>, in alluding to this subject, stated "He was willing that all controversies in relation to grants, sales, and purchases, should be determined in parliament, which could best provide for the just satisfaction of all who were concerned. Parliament, however, made no such provision, and the royalists conceived they were unjustly treated.

Declaration from  
Breda.

At the commencement of the rebellion, many royalists effected sales of their estates, and applied the produce towards alleviating the pecuniary necessities of the king, and raising troops for his defence, and they, in consequence, had been reduced to utter penury<sup>2</sup>; but it was now held they had no right to compensation, because their property had been voluntarily disposed of.

Unfortunate  
situation of the  
royalists, in re-  
spect of their  
properties.

The crown lands, and those which belonged to the church, and lay proprietors, had been disposed of in gifts, and by sales. The original proprietors reclaimed their properties, forcible entries were made, and the possessors ejected, who had no legal claim to regain their possession, because they could not plead a title derived from an usurped authority.

Disputes respect-  
ing crown lands,  
&c.

The crown, at the united request of both Houses, issued a commission to arbitrate between the revolutionary purchasers and the royalists, and, by proclamation, recommended the latter to exercise lenity and conciliation; but which advice was not generally adopted<sup>3</sup>.

6. *The Parliament of 1661.*

The royalists, with a view of strengthening their party, circulated the doctrine, that the convention parliament, not having been called together by royal writ, was an assembly illegally constituted, and that its proceedings were liable to be

Dissolution of  
the convention  
parliament.

<sup>1</sup> 11 Lords' Journ. 7, 10.

<sup>2</sup> Kennet's Register, 233. 7 Somers' Tracts, 517, 557. Life of Clarendon, 99.

<sup>3</sup> Stat. 12 Charles II. c. 17. 2 Kennet's Register, 312. Clarendon, 163. 4 Harris, 345. 7 Lingard, 360.

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questioned by the courts of law, unless confirmed by a parliament legally constituted, and the king, not expecting to derive any additional benefit from its continuance, commanded a dissolution<sup>1</sup>.

Impolitic measures of parliament.

The first proofs which the new parliament gave of its impolitic spirit, was by ordering the solemn league and covenant; with the acts for erecting a high court of justice for the trial of Charles Stuart; for subscribing the engagement; for establishing a commonwealth; for renouncing the title of the present king; and for the security of the protector's person; to be burned by the common hangman<sup>2</sup>: and although they passed, in consequence of the royal interposition, the late Act of Indemnity, without new exceptions, it was in direct opposition to their expressed inclinations<sup>3</sup>.

The negative voice, and the command of the army, inherent rights in the crown.

It was affirmed that the negative voice, and the command of the army, were rights inherent in the crown: to devise any bodily harm to the king, and to distinguish between his person and his office, were made treason; to call the king a heretic, or a papist, was declared to incapacitate the offender from holding any office in church or state; and the penalties of *præmunire* were enacted against all who should assert that the parliament of 1641 was not dissolved, or that both Houses or either House, possessed legislative authority, independently of the sovereign<sup>4</sup>.

Severe restrictions on the press.

At the same time, severe restrictions were imposed upon the press, to prevent the publication of books maintaining opinions contrary to the Christian faith, or the doctrine or discipline of the Church of England, or tending to the defamation of church or state, or of the governors thereof, or of any person whomsoever<sup>5</sup>.

Restoration of the bishops.

The bishops were restored to their legislative seats, in the House of Lords<sup>6</sup>, and the treasonable proceedings which had attended their exclusion, were productive of a statute which, after reciting that it had been found, by sad experience, that remonstrances and declarations, and other addresses to the king, or to both or either Houses of Parliament, for alterations of matters established by law, for the redress of pretended

<sup>1</sup> Life of Clarendon, 74; vide etiam 6 Parl. Hist. 145, 147.

<sup>2</sup> Com. Journ. May 17, 1661.

<sup>3</sup> Life of Clarendon, 71. Com. Journ. June 14, 1661. 6 Parl. Hist. 209.  
<sup>4</sup> Hallam's Const. Hist. 439.

<sup>5</sup> Stat. 13 Charles II. cc. 1 and 6.

<sup>6</sup> Clarendon, 181. 7 Lingard, 368.

<sup>6</sup> Stat. 13 Charles II. c. 2.

grievances in church or state, had been made use of to serve the ends of factious and seditious persons, gotten into power, to the violation of the public peace, provided that no petition or address should be presented to the king, or either House of Parliament, by more than ten persons; nor that any one should procure above twenty persons to consent or set their hands to any petition for alteration of matters established by law, in church or state, unless with the previous order of three justices of the county, or the major part of the grand jury<sup>7</sup>, under the liability of being fined 100*l.* and imprisoned for three months.

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Petition for redress of grievances.

### 7. *Punishment of the Regicides.*

The political parties still regarded each other with suspicion, reports of treasonable conspiracies were circulated against the nonconformists, and the denounced were arrested, convicted, and executed; and parliament, "eager for prey," directed their attention to those surviving regicides who were confined in prison.

The Lord Monson, Sir Henry Mildmay, and Robert Wallop, were pinioned upon hurdles, and drawn through the streets with halters round their necks, to the gallows at Tyburn<sup>1</sup>; and those who had been excepted from the penalty of death, enjoying titles of honour, were degraded.

Execution of the regicides.

A bill for the execution of those regicides who had surrendered themselves in consequence of the royal proclamation, was passed by the commons, and carried to the lords, who, after having had it once read, and examined the prisoners at their bar, refrained, by the secret commands of the king<sup>2</sup>, from pursuing any ultimate proceedings<sup>3</sup>.

The regicides who had surrendered themselves under the royal proclamation.

Allusion has been made to that statute<sup>4</sup> which gave indemnity to all persons obeying a king for the time being, however defective his title: and, as a constitutional principle, established the duty of allegiance to the existing government.

Duty of allegiance to the existing government.

The commons, in order to wreak their vengeance, disregarded the inclinations of the king<sup>5</sup>, by instituting a criminal

<sup>7</sup> Stat. 13 Charles II. c. 5.

<sup>1</sup> 7 Lingard, 370.

<sup>2</sup> Clarendon's Notes in Clar. Pap. iii. App. xlvii.

<sup>3</sup> Com. Journ. July 1, 1661; Jan. 27, Feb. 1, 3, 1662. 11 Lords' Journ. 375, 380. 1 Pepys, 243.

<sup>4</sup> Vide ante, 154, 155.

<sup>5</sup> Com. Journ. July 1, Nov. 22, 1661; Jan. 10, Feb. 19, 1662.

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process against Vane and Lambert, and though the convention parliament had refused to except them from the penalty of death, yet, on account of the declaration from Breda, had recommended them to mercy in case of their conviction, which recommendation had been favourably received<sup>6</sup>.

They were indicted for overt acts of high treason against Charles II., by their exercise of civil and military functions under the commonwealth; though not, as far as appears, expressly directed against the king's authority, and certainly not against his person<sup>7</sup>.

The question was not whether a right to the crown descended according to the laws of inheritance; but whether such a right, divested of possession, could challenge allegiance as a bounden duty, by the law of England,—but it is clear a king, "that hath right, and is out of possession," is not within the statutes of treasons<sup>8</sup>.

Vane urged, in justification of his conduct, that by the statute which rendered the Long Parliament indissoluble without its own consent, the two Houses were raised to a power equal and co-ordinate with that of the king, and possessed a right to restrain oppression and tyranny: by the war which followed between these equal authorities, the people were placed in a new and unprecedented situation, to which the former laws of treason could not apply: after the decision by the sword, "a decision given by that God, who, being judge of the whole world, does right, and cannot do otherwise," the parliament became, *de facto*, in possession of the sovereign authority, and whatever *he* had done in obedience to that authority was justifiable, by the principles of civil government, and the statute of 11 Henry VII.

The judges, however, determined that Charles, in virtue of the succession, had been king *de facto*, as well as *de jure*, from the moment of his father's death, though "kept out of the exercise of his royal authority by traitors and rebels:" and as he was the only person then claiming kingly power, he was to be considered as a king in possession, and in the actual exercise of his authority<sup>9</sup>.

<sup>6</sup> Com. Journ. Aug. 28, Sept. 5, 1660. 11 Lords' Journ. 156. 7 Lingard, 370.

<sup>7</sup> 2 Hallam's Const. Hist. 440, 441.

<sup>8</sup> 3 Inst. 7. Bagot's Case, 9 Edward IV. Higden's View of the English Constitution. 2 Hallam's Const. Hist. 442. Vide ante, 111, 154, 155.

<sup>9</sup> 6 State Trials, 119—186. 7 Lingard, 373. 7 Hume, 381.

Execution of  
Vane, and  
punishment of  
Lambert.

Justification, by  
Vane, of his  
conduct.

Charles II. de-  
clared by the  
judges to have  
been a king *de  
facto* from the  
death of his  
father.

Parliament being determined to immolate a victim, sentence of death was passed and executed upon Vane; but Lambert was confined, as a prisoner, in Guernsey, for thirty years<sup>10</sup>,—thus affording an additional instance that law, justice, or a sense of honour, are practically held by popular assemblies in utter scorn, where a party object is to be obtained, or where a political enemy is to be butchered.

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### 8. *The Corporation Act.*

Although the courtiers, who were desirous of extending the powers of the crown, were predominant in parliament, yet it was impossible for them to be absolute as long as the presbyterians retained possession of the corporate and borough offices; accordingly the “Corporation Act” was introduced, to eject the latter from such local authority.

Enactments  
contained in  
Stat. 13 Charles  
II. c. 1, sess. 2.

By that statute, commissioners were appointed, with the power of removing at discretion every individual holding office in or under any corporation in the kingdom; and that all persons retaining their situations should qualify themselves, by renouncing the solemn league and covenant, by taking the oaths of allegiance and supremacy, and by declaring upon oath their belief of the unlawfulness of taking up arms against the king on any pretence whatsoever, and their abhorrence of the traitorous doctrine, that arms might be taken up by his authority against his person, or against those that were commissioned by him; and that no future officer should be eligible who had not, within the year preceding his election, taken the sacrament according to the rite of the Church of England.

In an abstract sense, this act was most unjust, because its effect was to destroy the political power of the presbyterians, who had been instrumental in effecting the Restoration; and by the Act of Uniformity, their ecclesiastical influence was annihilated.

Objects of the  
Corporation Act.

This statute likewise produced great change in the constitution of many of the boroughs, and vested the municipal franchises in non-residents, whose rights to exercise either the parliamentary or municipal franchises, arose from political depravity.

Alterations  
effected in the  
municipal insti-  
tutions.

<sup>10</sup> Com. Journ. Aug. 28, 1660. 11 Lords' Journ. Sept. 5, 1662.

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9. *The Triennial Act.*

Unconstitutional  
address of the  
king to parlia-  
ment, in 1664.

The absolute notions of the king were exemplified from his conduct in effecting the repeal of the Triennial Act, in which he, in effect, avowed a design forcibly to prevent the execution of the laws<sup>1</sup>. It was generally thought that no parliament, under that act, could sit for more than three years; but the king, on opening the parliamentary session of 1664, stated that he had often read over that bill, and, though there was no colour for the fancy of the determination of the parliament, yet he would not deny that he had always expected them to consider the wonderful clauses in that bill, which passed in a time very uncared for the dignity of the crown, or the security of the people. He requested them to look again at it. For himself, he loved parliaments; he was much beholden to them; he did not think the crown could ever be happy without frequent parliaments. "But assure yourselves," he concluded, "if I should think otherwise, I would never suffer a parliament to come together by the means prescribed by that bill<sup>2</sup>."

Repeal of the  
Triennial Act.

Notwithstanding this language, parliament passed a bill for the repeal of that which had been unanimously enacted, in 1641, as the basis of constitutional monarchy; the preamble reciting, that the Triennial Act was "in derogation of his majesty's just rights and prerogative inherent in the imperial crown of this realm, for the calling and assembling of parliaments<sup>3</sup>;" and then repeals every clause and article. But the opposition were sufficiently powerful to have a proviso inserted, that parliaments should not, in future, be intermitted for above three years at the most; so that, in principle, the Triennial Act still subsisted, but without security to enforce its observance; and the necessity of such securities was thus evinced, that nearly four years elapsed between the dissolution of Charles's last parliament and his death.

<sup>1</sup> Vide ante, 393.

<sup>2</sup> 11 Lords' Journ. 502.

<sup>3</sup> Com. Journ. March 28, 1664. Clarendon, 281. Stat. 16 Charles II. c. 1. 2 Hallam's Const. Hist. 448.

10. *Religious Dissensions.*

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Christianity is religious virtue,—it is universal love: and much is it to be regretted that it should ever have been made an engine of power,—a banner of popularity,—or a badge of party.

Christianity defined.

Bigotry, when associated with politics, as exemplified by the Roman Catholics and the puritans, besides the black passions to which it directly gives birth, covers with a pretended holy garb, even to one's own eyes, the most selfish and malignant; while by shutting against its opponents every avenue of sympathy, the real source of moral feeling, it stifles the voice of conscience, and, by gaining the support of a faction, kindles indignation against public reproach, that would otherwise humble the guilty under its lash.

Evil effects of bigotry when associated with politics.

One of the last acts of Charles I. was to address the following exhortation to his son, and which contains an accurate view of the English Catholic church, and of the constitutional loyalty of its members. “If you never see my face again, and God will have me buried in such a barbarous imprisonment and obscurity, wherein few hearts that love me are permitted to exchange a word or a look with me, I do require and entreat you, as your father and your king, that you never suffer your heart to receive the least check against, or disaffection from, the true religion established in the church of England. I tell you I have tried it, and after much search and many disputes, have concluded it to be the best in the world, not only in the community as Christian, but also in the special notion as reformed; keeping the middle way between the pomp of superstitious tyranny, and the meanness of fantastic anarchy. . . . Not but that the draught being excellent as to the main, both for doctrine and government in the Church of England, some lines, as in very good figures, may haply need some correcting and polishing; which might here easily have been done by a safe and gentle hand, if some men's precipitancy had not violently demanded such rude alterations as would have quite destroyed all the beauty and proportions of the whole. . . . The scandal of the late troubles, which some may object and urge to you against the Protestant religion established in England, is easily answered to them, or your own thoughts, in this,—*that scarce any one who hath been a beginner, or an active persecutor, of*

Last exhortation of Charles I. to his son, respecting the English Catholic church.

The Anglican church is between superstitious tyranny, and the meanness of fantastic anarchy.



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*this late war against the church, the laws, and me, either was, or is, a true lover, embracer, or practiser of the Protestant religion established in England, which neither gives such rules, nor ever before set such examples<sup>1</sup>."*

The nation divided into three religious parties.

When the restoration of Charles II. occurred, the nation were divided into three religious parties; viz., the members of the English Catholic church, the Roman Catholics, and the dissenters,—comprising the presbyterians, the independents, and the anabaptists.

Liberty of conscience promised in the declaration of Charles II. from Breda.

Charles, in his declaration from Breda<sup>2</sup>, had promised to grant liberty of conscience, so that "no man shall be disquieted or called in question for differences of opinion in matters of religion, which do not disturb the peace of the kingdom; and that we shall be ready to consent to such an act of parliament as, upon mature deliberation, shall be offered to us for the full granting that indulgence,"—but no allusion was made to the church establishment.

Proposed restoration of rights to the ministers of the Anglican church.

The ejected ministers of the Anglican church, who had endured, for their attachment to its discipline and to the crown, so many years of poverty and privation, had a just claim to be restored to their original rights: and the commons, previous to the advent of Charles, prepared a bill of confirmation and restoration, with the two-fold object of replacing in their benefices, but without their legal right to the intermediate profits, the episcopal clergy, who, by ejection or forced surrender, had made way for intruders; and at the same time of establishing the possession, though originally usurped, of those against whom there was no claimant living to dispute it, as well as of those who had been presented on legal vacancies<sup>3</sup>,—so that an usurped possession was confirmed where the lawful incumbent was dead<sup>4</sup>.

This Act of Conciliation gave great offence to the Anglican church, whose just suspicions of the presbyterians and other sects, as regarded the supremacy of the Anglican church, had in no ways relaxed; but the king was obliged to pursue a course of hypocritical and expedient policy, in order to make, if possible, both parties his adherents,—as it was impossible for Charles directly to expel the presbyterians without being guilty of ingratitude, as they had zealously exerted themselves to procure his restoration, and, which perhaps

<sup>1</sup> Southey's Book of the Church, 510, 511.

<sup>2</sup> 11 Lords' Journ. 7, 10.

<sup>3</sup> Stat. 12 Charles II. c. 17.

<sup>4</sup> 2 Hallam's Const. Hist. 430, 431.

operated as a more powerful argument, that party still maintained considerable political influence.

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The dissenters from the Anglican church urged upon the king the utility of a general religious union, and that it could only be attained by the terms of communion being confined to points which were deemed essential, each party conceding the rest: and they transmitted their proposals to the king.

Proposals of the Protestant dissenters, urging a general religious union.

These proposals commenced by four preliminary requests: that serious godliness might be countenanced,—that a learned and pious minister, in each parish, should be encouraged,—that a personal public owning of the baptismal covenant should precede the admission to the Lord's-table,—and that the Lord's-day should be strictly sanctified.

Four preliminary requests.

They then intimated that Archbishop Usher's system of episcopal government should be the ground-work of the accommodation. It provided, that the concerns of the church should be transacted by four graduated synods and a national council.

Archbishop Usher's system of episcopal government.

1. The rector or pastor, and churchwarden or sideman, were to form a *parochial synod*, that should meet weekly, and take notice of those who lived scandalously, and admonish them; and if they were not reclaimed, report them to the monthly synod.

Parochial synod.

2. Every rural deanery of the established church was to have a superintendent called a *suffragan*: he and the rectors or pastors within the circuit, were to form the *suffragan synod*; it was to meet monthly, to receive the report of the parochial synod; to notice, and, if necessary, censure all new opinions, heresies, schisms, within the district.

Suffragan synod.

3. A certain number of the deaneries or suffraganries was to constitute a diocese, under the government of a bishop or superintendent. Once or twice in every year he was to hold an assembly of the suffragans, and rectors and pastors, within his diocese. This was to constitute a *diocesan synod*; here, matters of particular moment were to be discussed, and appeals from the synod of suffragans and rectors were to be received, and all questions in it were to be determined by a plurality of the voices of the suffragans.

Constitution of a diocese.

Diocesan synod.

4. All the bishops or superintendents within each of the two provinces of Canterbury and York, and the rectors or suffragans of their dioceses, and of a certain number of the clergy, to be elected out of the diocese to which they belonged,

Provincial synod.

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were to form a *provincial synod*, that should be held in every third year. The primate of each province was to preside over this assembly, as moderator. It was to receive appeals from the diocesan synod.

National synod.

5. But the assemblies of each province might unite, and form a *national council*. Here appeals from all inferior synods might be received, all their proceedings examined, and such ecclesiastical constitutions, as concerned the state and church of the whole nation, might be established.

Religious ceremonies.

This presbyterian scheme was accompanied by proposals, in which the dissenting ministers acquiesced in a Liturgy; but, without absolutely rejecting the surplice, the use of the cross in baptism, the bowing at the name of Jesus, and other ceremonies, they observed, that the church service was perfect without them; that they were rejected by most of the Protestant churches abroad, and that they had been the cause of much disunion and disturbance in England. They requested that none of their ministers might be ejected from sequestered livings, the incumbents of which were dead; that no oaths, subscriptions, or renunciation of orders, might be required of them, until there should be a general settlement of the religious concerns of the nation<sup>2</sup>.

General settlement of religious concerns.

The king communicated these propositions to the bishops; some were for concessions to the dissenters, others for an immediate and absolute rejection of their advances.

Answer of the Anglican bishops.

The answer of the bishops was expressed in guarded terms. They observed, that the law had sufficiently provided for many of the regulations solicited,—for those particularly which were mentioned in the four preliminary requests; that the bishops were willing to allow liberty of conscience, but could not allow conventicles, as these were dangerous to the state; that the Common Prayer was altogether unexceptionable, and could not be too strictly enjoined; yet that they were willing to revise it, if his majesty should think it proper; they were willing that extemporary prayer might be used, both before and after the service, but they were unwilling to part with any of the ceremonies<sup>3</sup>.

The government perceived that all parties were inclined for a religious controversy, which, if not checked, would plunge the country into a renewal of its recent calamities; accordingly the king was advised to interfere as umpire, and a declaration

<sup>2</sup> 2 Collier's Hist. 871—873.

<sup>3</sup> 3 Butler's Hist. Rom. Cath. 4—8.

was prepared, in which, after avowing his attachment to episcopacy, and that it might be so modified as to reconcile the existing differences of opinion, commanded,—first, with respect to jurisdiction, that no bishop should exercise any illegal or arbitrary authority, or pronounce ecclesiastical censures, or celebrate ordinations without the assistance and advice of his chapter, and of an equal number of presbyters deputed by the clergy of the diocese, or confirm in any church without the information and consent of the minister; and, secondly, with regard to the religious scruples of the Presbyterians, that the reading of the Liturgy, the observance of the ceremonies, the subscription to all the Thirty-nine Articles, and the oath of canonical obedience, should not be exacted from those who objected to them through motives of conscience<sup>7</sup>; and the king resumed his promise at Breda for religious toleration.

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Declaration of  
Indulgence.

The convening of a future synod, in order that religious dissensions might be finally settled, having been alluded to, dissatisfied the presbyterians, as they desired a permanent, not a temporary arrangement, and this party framed a bill to convert the royal declaration into a law; but it was negatived by the House, and soon afterwards the parliament was dissolved<sup>8</sup>.

Dissatisfaction  
of the presbyterians.

The king having promised that the Book of Common Prayer should be revised by a commission of divines from both communions, conferences for such an object were held between the bishops and presbyterians, at the Savoy, in May, 1661; but after protracted discussions, both parties inflexibly adhered to their original opinions, and reported to the king, that they agreed as to the end, but could come to no agreement as to the means<sup>9</sup>.

Religious as-  
sembly at the  
Savoy.

To enter into particulars would be superfluous. Disputes concerning religious forms are, in themselves, the most frivolous of any, and merit attention only so far as they have influence on the peace and order of civil society<sup>10</sup>.

The convocation was assembled on May 8, 1661, and its principal business was the alteration of the "Common

The convocation  
of 1661.

<sup>7</sup> 11 Lords' Journ. 179. 2 Neal, 575—580. Vide etiam Kennet, Reg. 280. Oldmixon, 488. 7 Lingard, 364.

<sup>8</sup> Com. Journ. Nov. 28, 1660. Clarendon, 76. 6 Parl. Hist. 141, 152.

<sup>9</sup> 6 State Trials, 25—44. 2 Neal, 601. 2 Hallam's Const. Hist. 454—457.

<sup>10</sup> 7 Hume, 369.

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Prayer," and the grant of a subsidy; being the last instance in which that authority was exercised by the clergy in convocation<sup>11</sup>.

The original  
powers and du-  
ties of the con-  
vocation.

This assembly exercised civil and ecclesiastical powers. They granted money to the crown, which was levied by ecclesiastical authority, till the reign of Henry VIII.; from which period, each several contribution was confirmed by an act of parliament; the sum paid depended on a poundage upon the value of each preferment; but the values could hardly have been those in the King's Book, since this very convocation formed a committee for reviewing the book of subsidies. The bishops were the collectors<sup>12</sup>. During the rebellion, the clergy<sup>13</sup> had been taxed with the laity, a method which, being found more convenient, was subsequently adopted. The change was effected by a private arrangement between Sheldon and Lord Chancellor Clarendon, without any specific act of parliament. By Stat. 16 & 17 Charles II. c. 1, which granted an aid of 2,477,500*l.*, the spiritual revenues which became chargeable under it, were released from the last two years of the late subsidy (1665). From this time the clergy<sup>14</sup> have paid the same taxes with the rest of their fellow subjects, and voted for members of parliament; an alteration which, whether for evil or for good, has extinguished the political existence of the convocation<sup>15</sup>.

The alterations  
made in the  
Common Prayer.  
The Bible.

The most important alterations made in the Common Prayer, were as follow.

1. The new or authorised version of the Bible was adopted in it, except in the Psalms, the ten commandments, and the sentences in the communion service.

The morning  
prayer.

2. The morning prayer was printed separate from the evening, such prayers as are common to both being reprinted, and the last five prayers in each were introduced from the end of the Litany.

The occasional  
prayers.

3. The occasional prayers, which stood connected with the Litany, were now divided from it. The prayers in the Ember weeks were inserted, (the latter of them from the Scotch Liturgy,) as well as that for the parliament, and for all conditions of men; at the same time, the general thanksgiving,<sup>16</sup> and that for restoring public peace at home, were added.

<sup>11</sup> 2 Short's Church Hist. 253.

<sup>12</sup> 5 Strype's Annals, 483. Vide ante, 97—99.

<sup>13</sup> 2 Collier's Eccl. Hist. 893.

<sup>14</sup> 1 Burnet's Own Time, 340.

<sup>15</sup> 2 Short's Church Hist. 258.

4. Some few new collects were inserted, some changed, and verbal alterations introduced into many. *Church* was generally substituted for *congregation*.

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New collects;  
and "church"  
substituted for  
"congregation."

5. In the communion service the exhortations were a good deal changed, and directed to be read on some previous Sunday or holyday, and communicants were directed to give notice of their intention the day before. The admonition about transubstantiation was again introduced, with some alterations from that of 1552.

Exhortations in  
the communion  
service.

6. The service for the baptism of those of riper years, and the form of prayer to be used at sea, were also introduced.

Baptism, and  
prayers to be  
used at sea.

7. The five last prayers in the visitation of the sick.

Visitation of the  
sick.

8. The consent of the curate is now required for confirmation, though the bishop may, if he see fit, confirm without it; and this rite is not made a *sine qua non* for receiving the Lord's Supper.

Consent of the  
curate required  
for confirmation.

9. The absolution in the Visitation of the Sick is left to the judgment of the curate, by the insertion of the clause, "if he humbly and heartily desire it."

Absolution in  
the visitation of  
sick.

10. In the churching of women, the service may now be performed from the desk, and the psalms are changed. The newly married couple are not now required to receive the Lord's Supper. The font is now to be placed conveniently by the direction of the ordinary, and the words, in the latter part of the Catechism, "Yes, they do perform them by their sureties, who promise and vow them both in their names," &c., are changed to, "Because they promise them both by their sureties," &c.

Churching of  
women.

Of these, 5, 8, 9, increased the discretionary power of the curate with regard to admonition, but afforded him not any judicial authority; and herein probably the real interests of Christianity were consulted: and the alterations effected in 1 and 5, were in compliance with the wishes of the non-conformists; and the introduction of the general thanksgiving and many verbal alterations, were suggested by them<sup>16</sup>.

There are at the end of the Prayer Book four services, which form no part of the book itself, namely, the Gunpowder Treason,—the Martyrdom of Charles I.,—the Restoration,—and the King's Accession; and although by Stat. 3 James I. c. 1, and 12 Charles II. cc. 14, 30, November 5, January 30, and

Forms of prayer  
ordered by pro-  
clamation.

<sup>16</sup> 2 Short's Church Hist. passim, 320.

**CHARLES II.** May 29, are days appointed to be kept holy, yet no service is appointed; and the authority for all these services is exclusively derived from an order by the king in council.  
**1649—1685.**

No national church can exist, unless her ministers be zealous advocates of the details of its services.

Although it is politic in national convulsions that social order should be restored with as little alteration as possible, yet no national church can exist, unless her ministers be zealous advocates of the details of its services.

At the restoration, the Act of Uniformity under Elizabeth came into operation; the object of that statute was to punish and finally to exclude those ministers who were not ready to conform with the rubrics and services of the Anglican church.

The Act of Uniformity, 13 & 14 Charles II. c. 4.

The Act of Uniformity, Stat. 13 & 14 Charles II. c. 4, was intended, and justly, to exclude from the church, those who did not declare their assent and consent to everything contained therein. It enacted, that the revised Book of Common Prayer, and of ordination of ministers, and no other, should be used in all places of public worship; and that all beneficed clergymen should read the service from it within a given time, and, at the close, profess in a set form of words their unfeigned assent and consent to everything contained and prescribed in it.

Objections to the declaration in the Act of Uniformity.

Dr. Lingard observes, many objected to this declaration: "In obedience to the legislature, they were willing to make use of the book, though they found in it articles and practices of the truth and propriety of which they doubted; but to 'assent and consent' to what they did not really believe or approve, was repugnant to the common notions of honesty and conscience<sup>17</sup>;" to which it may be answered, Why beholdest thou the mote that is in thy brother's eye, but considerest not the beam that is in thine own eye?

It was also provided, that no person should administer the sacrament, or hold ecclesiastical preferment, who had not received episcopal ordination; and that all incumbents, dignitaries, officers in universities, public schoolmasters, and private tutors, should subscribe a renunciation of the covenant, and a declaration of the unlawfulness of taking up arms against the sovereign under any pretence; these provisions were protested against by the Presbyterians, but they were unable to effect an alteration<sup>18</sup>, and the non-conformist clergymen were ejected<sup>19</sup>.

<sup>17</sup> 7 Lingard, 376.

<sup>18</sup> 11 Lords' Journ. 573, 577.

<sup>19</sup> Neal, 625—636. Kennet's Reg. 807. Burnet, 185. 2 Hallam's Const. Hist. 462.

Dr. Lingard remarks<sup>20</sup>, that the Act of Uniformity might have been necessary for the restoration of the church to its former discipline and doctrine; but if such was the intention of those who formed the declaration from Breda, they were guilty of infidelity to the king, and of fraud to the people, by putting into *his* mouth language, which, with the aid of equivocation, they might explain away; and by raising in *them* expectations, which it was never meant to fulfil<sup>21</sup>.

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But the fact was, every attempt was made by the English Catholic church to conciliate dissenters; and nothing, save the utter annihilation of the Anglican church, would have appeased the malignancy of their hatred; in truth, as Clarendon observed, "It was an unhappy policy, and always unhappily applied, to imagine, that dissenters could be recovered or reconciled by partial concessions, or by granting less than they demanded. Their faction was their religion."

Dissenters cannot be recovered or reconciled by partial concessions.

Charles, when in exile, had frequently expressed his abhorrence from the penal laws by which the Roman Catholics were oppressed<sup>22</sup>, and his base apostasy after the restoration, confirmed his previous sentiments<sup>23</sup>. But whatever may have been the feelings by which the sovereign was actuated, however desirous to befriend the Roman Catholics, he found it impossible to conquer the implacability which the parliament and people entertained against that sect<sup>24</sup>; in fact, the maintenance of the Church of England was nearer and dearer to the country, than the crown itself.

Roman Catholic disabilities.

Although the House had resolved to abolish the writ *de hæretico inquirendo*, and also to repeal the statutes which imposed the penalties of treason on Roman Catholic clergymen found within the realm, or those of felony on the harbourers of such clergymen, or those of *præmunire* on all who maintained the authority of the Bishop of Rome; yet this measure of relief did not equal the expectations of the laity, who

Fines and forfeitures of recusancy sought to be released.

<sup>20</sup> 7 Lingard, 378.

<sup>21</sup> Vide etiam Kennet's Hist. Charles II. 252. Collier, 878. Baxter, 338.

<sup>22</sup> Clarendon, 140.

<sup>23</sup> The suspicions against Charles and James, of their Roman Catholic belief, were so universal, that parliament, in its first session, had made it penal to say, that "the king was a papist, or popishly affected." Stat. 13 Charles II. c. 1; vide etiam, as to the king's religious opinions, 2 Carte's Letters, 264. 3 Clar. State Papers, 602. 2 Carte's Life of Ormond, 255. 5 Harris' Lives, 54. 3 Kennet's Hist. 237. Kennet's Reg. 852.

<sup>24</sup> Com. Journ. March 17 & 28, 1663.



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sought to be freed from the fines and forfeitures of recusancy, and relief was ultimately lost, in consequence of dissensions which arose whether the jesuits should, or should not, participate in its immunities<sup>25</sup>.

Declaration for  
indulgence.

The presbyterians, the independents, and the Roman Catholics, unceasingly persecuted the king<sup>26</sup> for a performance of the promise which he had made at Breda relative to religious toleration. It was contended that the sovereign possessed, in virtue of his supremacy, the right of suspending penal laws in matters of religion; and that James I. and Charles I. had raised a yearly revenue by the sale of such protections.

The king issued a proclamation acknowledging his declaration at Breda, and stated "that as in the first place he had been zealous to settle the uniformity of the Church of England in discipline, ceremony, and government, and shall ever constantly maintain it; so as for what concerns the penalties upon those who, living peaceably, do not conform themselves thereunto,"—"he should make it his special care, so far as in him lay, without invading the freedom of parliament, to incline their wisdom next approaching sessions, to concur with him in making some such act for that purpose, as may enable him to exercise, with a more universal satisfaction, that power of dispensing, which he conceived to be inherent in him<sup>27</sup>."

Dispensation  
from the statutes  
of non-con-  
formity to the  
Anglican church.

In accordance with this declaration, a bill, in 1663, was introduced into the lords, enabling the king to dispense at his discretion with the laws and statutes requiring oaths or subscriptions, or obedience to the doctrine and discipline of the established church.

The lords and  
commons justly  
suspect the king  
of treachery.

The lords and commons regarded these proceedings with a just distrust of the motives, and a determination to thwart the wishes, of their papist sovereign; the commons presented an address, denying that any obligation lay on the king, by virtue of his declaration from Breda, which must be understood to depend on the advice of parliament, and intimating he possessed no such dispensing prerogative as was claimed, and contended that the indulgence which was sought, would amount to the legal establishment of schism, would expose his majesty to the

<sup>25</sup> 11 Lords' Journ. 276, 286, 299, 310. Kennet's Reg. 469, 476, 484, 495. Orleans, 236. 2 Butler's Mem. of Catholics, 27. 4 Ibid. 142. 1 Burnet, 194. Clarendon, 143. Kennet's Reg. 476, 496. 7 Lingard, 381.

<sup>26</sup> Baxter's Life, ii. 429.

<sup>27</sup> 4 Parl. Hist. 157. Kennet's Regist. 848—891. 7 Hume, 387.

ceaseless importunities of the dissenters, would lead to the multiplication of sects and sectaries, and, ending in universal toleration, would produce disturbance instead of tranquillity, because men of every religious persuasion form a distinct body, pursuing their peculiar interests, and acting in accordance with their peculiar prepossessions<sup>28</sup>; in fact, Clarendon, and other ministers of the crown, arrayed themselves in opposition to the proposed enactment, and its failure was the result<sup>29</sup>.

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Assuming that no just causes of suspicion existed against the Roman Catholics and puritans; yet, when religious bigotry was excited, persecution, as its invariable sequence, ensued, and the spirit of conciliation was disregarded; thus, when the king solicited permission to shelter those of the Roman Catholics, who had served the royal cause, from the extreme severity of the penal statutes, both Houses presented an address for a proclamation ordering all Catholic priests to quit the kingdom, under the penalty of death; and the king was obliged to acquiesce in such request. And at the close of the session another address was presented, that the king should put in execution all the penal laws against Catholics, dissenters, and sectaries of every description<sup>30</sup>.

Roman Catholic  
priests ordered  
to quit the king-  
dom.

The Triennial Act<sup>31</sup> was the price which parliament gave to the crown for its consent to the "Conventicle Act." This statute was for the purpose of "suppressing seditious conventicles," and by which all meetings of more than five individuals, besides those of the family, for religious worship not according to the Book of Common Prayer, were declared seditious and unlawful conventicles:—and that the punishment of attendance at such meeting by any person above sixteen years of age should be, for the first offence, a fine of 5*l.*, or imprisonment during three months; for the second a fine of 10*l.*, or imprisonment during six months; for the third a fine of 100*l.*, or transportation for seven years; and that if the law was transgressed more than thrice, the fine at each repetition of the offence was to be augmented by the additional sum of 100*l.*<sup>32</sup>. Conventicles could be prevented by force, or broken

Conventicle Act,  
Stat. 16 Charles  
II. c. 4.

<sup>28</sup> Com. Journ. Feb. 27, 28, 1663.

<sup>29</sup> 11 Lords Journ. 478, 482, 486, 491.

<sup>30</sup> Ibid. 558, 578. Com. Journ. April 27, May 30, 1663. 2 Hallam's Const. Hist. 471.

<sup>31</sup> Stat. 16 Charles II. c. 1. Vide ante, 428.

<sup>32</sup> 11 Lords' Journ. 620. Com. Journ. April 28, May 12, 14, 16, 1664. Miscel. Aul. 316, 319, 330.

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into; but the house of a peer could not be searched without the presence of two magistrates. Thus was established an unprecedented system of penalties and persecutions. In addition, the language of this law was ambiguous, its interpretation entrusted to a single magistrate, with powers to convict without the intervention of a jury, and was productive of very unjustifiable proceedings. But the parliament were at this period equally prejudiced against all dissenters; the only distinction that existed was, that the papists were more feared, the puritans were more detested.

The Five-Mile  
Act, Stat. 17  
Charles II. c. 2.

During the plague, the presbyterian ministers availed themselves of the opportunity to disseminate libels against the court and the clergy, which caused a statute to be passed, by which all persons in holy orders who had not subscribed to the Act of Uniformity, were directed to swear that it was not lawful, upon any pretence, to take arms against the king; and that they did abhor that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him, and would not at any time endeavour any alteration in church or state. If any refused to take such oath, they were to be incapable of teaching in schools, and prohibited from coming within five miles of any city, corporate town, or borough sending members of parliament, or of any village where they had exercised their ministerial duties, under a penalty of 40*l.*, and six months imprisonment for refusing to take the oath of non-resistance; thus consigning the non-conforming ministers to utter penury and banishment<sup>33</sup>.

Impolicy of  
this statute.

The question of resistance is one which subjects ought never to remember, and rulers never to forget, and therefore this statute was impolitic; and the declaration concerning church government was politically injurious; but the government were aware that the republican party were exerting their infamous energies to establish a commonwealth, and consequently it became requisite to adopt very coercive principles<sup>34</sup>.

Banishment of  
Clarendon.

The banishment of Clarendon<sup>35</sup> caused that ministry which

<sup>33</sup> Baxter, iii. 2. Neal, 652. 1 Burnet, 393. 11 Lords' Journ. 700. Clarendon, 217, 290. 4 Wilk. Conc. 583. 7 Somers' Tracts, 585.

<sup>34</sup> 2 Œuvres de Louis XIV. 204. Burnet, 226. Clarendon's Life, 299. 3 Ludlow, 151—157. Southey's Book of the Church, 521.

<sup>35</sup> 6 State Trials, 318. Vide Character of Clarendon, Macpherson's Hist. of England, 98. 2 Hallam's Const. Hist. 487.

had been established at the restoration to be dissolved, and the component members of the new ministry were more disposed to religious toleration, and the design was to act on the principle of the declaration of 1660, so that presbyterian ordinations should pass *sub modo*<sup>36</sup>.

But the sentiments of the commons towards religious dissenters were such, that all attempts at conciliation were rendered abortive, and they voted an address to the king, to put in execution all the laws against non-conformists and papists; and afterwards a bill was passed and sent to the lords, but which failed, in consequence of a prorogation, having for its object the continuance of the existing penalties against frequenters of conventicles<sup>37</sup>.

In 1670, the Conventicle Act having expired, Stat. 22 Charles II., c. 1, was passed, which reduced the penalty to 5s. for the first offence of being present at a conventicle, and to 10s. for all subsequent ones; but imposed a fine on the preacher of 20*l.* for the first, and 40*l.* for each future offence; and in case the preacher fled, it made any one present liable to pay a portion of his fine, not exceeding 10*l.*, and subjected the owner of the premises to a fine of 20*l.*, and the magistrates who neglected to enforce the provisions of such law were liable to certain fines<sup>38</sup>.

In consequence of this enactment, spies and informers multiplied; the dissenting clerical ministers found it necessary to abscond; houses were entered by force, and searched without ceremony; and the inmates were dragged to prison, and condemned to pay fines.

The quakers, persisting in the exercise of their religious rites, two of their preachers, Penn and Mead, were indicted for a riot, and, because a jury acquitted them, the jurors were fined forty marks each, and committed to prison; and the prisoners, though acquitted, were severely punished for contempt, in refusing to be uncovered in the presence of the court<sup>39</sup>.

During the war with Holland, serious alarm had arisen that the malcontents had leagued themselves with the enemy; and Charles, for the purposes of conciliation, published, in 1672, a

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An address voted that the laws against non-conformists and papists should be put in execution.

The Conventicle Act, Stat. 22 Charles II. c. 1.

Improp. r punishment of the non-conformists.

<sup>36</sup> Kennet, 293. Baxter, 23. Pepys' Diary, Dec. 21, 1667.

<sup>37</sup> 4 Pepys, 34. Com. Journ. April 28, 1668. 4 Parl. Hist. 413, 422.

<sup>38</sup> Burnet, 449—451.

<sup>39</sup> 1 Burnet, 471. 6 State Trials, 951—1036. 2 Sewell, 259—271. Neal, c. 8. 7 Lingard, 505.

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Suspension of  
penal laws in  
matters ecclesi-  
astical.

declaration, stating that the experience of twelve years had proved the inefficacy of coercive measures in matters of religion; that he found himself obliged to make use of that supreme power in ecclesiastical matters, which was not only inherent in him, but had been declared and recognised to be so by several statutes and acts of parliament; that it was his intention and resolution to maintain the Church of England in all her rights, possessions, doctrine, and government; that it was moreover his will and pleasure that all manner of penal laws in matters ecclesiastical, against whatsoever sort of non-conformists or recusants, should be from that day suspended; and that, to take away all pretence for illegal or seditious conventicles, he would license a sufficient number of places and teachers for the exercise of religion among the dissenters, which places and teachers so licensed should be under the protection of the civil magistrate; but that this benefit of public worship should not be extended to the Catholics, who, if they sought to avoid molestation, must confine their religious assemblies to private houses<sup>40</sup>.

Dispensing  
powers denied to  
the king.

In 1673 it was contended in parliament that the royal authority was bounded by the same limits in ecclesiastical, as in civil matters; that the king might remit the penalties of the offence, but he could not suspend the execution of the law; and, after a lengthened debate, it was resolved, by a majority of one hundred and sixty-eight to one hundred and sixteen, that "penal statutes in matters ecclesiastical cannot be suspended but by acts of parliament," and which was embodied in an address to the king<sup>41</sup>.

Answer of the  
king.

To this address Charles replied, that he was sorry they had questioned his ecclesiastical authority, which had never been questioned in the reigns of his ancestors; that he pretended to no right of suspending any laws concerning the properties, rights, or liberties of the subject; that his only object, in the exercise of his ecclesiastical power, was to relieve the dissenters; and that he did it not with the intention of avoiding the advice of parliament, but was still ready to assent to any bill which might be offered to him, appearing better calculated than his declaration to effect the ends which he had in

<sup>40</sup> 2 Collier, 895. Baxter's Life, iii. 99, 101. Kennet, 313. 4 Parl. Hist. 515. 7 Lingard, 531. 2 Hallam's Const. Hist. 528.

<sup>41</sup> Com. Journ. February 10, 1673.

view, the ease of all his subjects, and the peace and establishment of the Church of England.

The commons voted this answer insufficient: and a second address informed him, that "he had been misled by his advisers, that the power of suspending statutes in matters ecclesiastical had never been claimed nor exercised by his ancestors, and that they prayed a more full and satisfactory reply to their petition<sup>40</sup>."

The king appealed to the lords; but subsequently, upon the advice of Colbert, cancelled the declaration, and made a solemn promise to the lords and commons, that "what had been done with respect to the suspension of the penal laws, should never be drawn into consequence<sup>41</sup>."

The Duchess of York having died a Roman Catholic<sup>42</sup>, the just suspicion that the Duke of York had embraced similar religious tenets<sup>43</sup>,—the equally-just suspicions of the base alliance with France<sup>44</sup>,—coupled with the king's public declarations and private conduct<sup>45</sup>,—engendered a belief that a deep-laid conspiracy existed for the destruction of the reformed religion; and so prevalent was this conviction, that the puritanical dissenters, to gratify their detestation of the papists, consented to sacrifice their personal interest to the public good, and united in the popular cry, which demanded additional securities for the maintenance of the English Catholic church<sup>46</sup>.

It was likewise observed, that some of the principal officers of the army were avowed enemies of the Anglican church, and, in consequence, an address was voted, requesting the king to discharge from the army every officer and soldier who should refuse to take the oaths of allegiance and supremacy, and to receive the sacrament after the rite of the Church of

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The commons  
voted the answer  
insufficient.

TEST ACT.  
Stat. 25 Charles  
II. c. 2.

Officers of the  
army required to  
take the oaths of  
allegiance and  
supremacy.

<sup>40</sup> Com. Journ. Feb. 14, 24, 26, 1673. 12 Lords' Journ. 540. Vide etiam Rapin, ii. 668. Baxter, 151. Birch's Tillotson, 42.

<sup>41</sup> 2 Dalrymple, 93—96. 12 Lords' Journ. 549.

<sup>42</sup> 1 Life of James, 452. 1 Burnet, 537. 2 Evelyn, 380. Travels of Cosmo, 456.

<sup>43</sup> 1 Macpher. 50, 52. 2 Dalrymple, 22. Travels of Cosmo, 456. 7 Lingard, 499, 500. 1 Life of James, 440.

<sup>44</sup> 1 Life of James, 442, 448. 2 Dalrymple, 5, 12, 22, 23, 31, 57, 62, 68—77, 80, 83. Temple's Letters, 123. 8 Somers' Tracts, 13. 2 Harl. Misc. 387. 5 Œuvres de Louis XIV. 466, 471—474. 6 Ibid. 476. Macpher. Hist. 54.

<sup>45</sup> 2 Carte's Ormond, 254. 1 Thurloe, 740—745. 1 Life of James, 442.

<sup>46</sup> 7 Lingard, 519. Guilford apud Dalrymple, ii. 91.

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England, and to admit no man, thereafter, into the service, who did not take the oaths before the first, and the sacrament before the second, muster.

The king having returned a satisfactory answer<sup>47</sup>, measures were immediately considered, by which those who were obnoxious might be removed from civil as well as military affairs.

Resolution of the commons, that no person shall be capable for military or civil offices without taking the oaths of allegiance and supremacy.

The result was, that the House of Commons came to a resolution, that every individual "refusing to take the oaths of allegiance and supremacy, and to receive the sacrament according to the rites of the Church of England, should be incapable of public employment, military or civil;" and which was introductory of that statute, commonly called the "Test Act"<sup>48</sup>, which required not only that the oaths should be taken, and the sacrament received, but also that a declaration against transubstantiation should be subscribed by all persons holding office, under the penalty of a fine of 500*l.*, and of being disabled to sue in any court of law or equity, to be guardian to any child, or executor to any person, or to take any legacy or deed of gift, or to bear any public office.

The effects of the Test Act.

The oath of supremacy, and the subscription against transubstantiation, were sufficient to exclude the Roman Catholics from office: the obligation of receiving the sacrament after the rite of the established church was necessary as far as regarded *them*; but it operated effectually to the exclusion of dissenters. Thus the latter, by the establishment of the test, placed themselves in a much worse situation than before. They forfeited the benefit of the king's declaration; they remained subject to the severe laws passed against them since the Restoration; and, in addition, they entailed on themselves and their posterity a new disability,—that of not holding employment, civil or military, under the crown.

Retirement of the Duke of York from public affairs.

This obligation admitted of no compromise or equivocation by any member of the Church of Rome, and extended from the highest to the lowest in the state; and its effect was to compel the retirement of the Duke of York from the office of Lord High Admiral, and also Lord Treasurer Clifford from public affairs<sup>49</sup>.

<sup>47</sup> 11 Lords' Journ. 547—549.

<sup>48</sup> Stat. 25 Charles II. c. 2. 4 Parl. Hist. 556.

<sup>49</sup> Com. Journ. Feb. 28, 1673. 7 Lingard, 554. 2 Hallam's Const. Hist. 531.

The circumstances attendant<sup>50</sup> upon the popish plot,—the publication of Coleman's "Letters"<sup>51</sup>,—excited the prejudices and fears of the nation to such an extent, that a bill was introduced into parliament for the purpose of excluding the Duke of York from the succession; but all proceedings were arrested, by the king dissolving the parliament, which had sitten for seventeen years, although no wretched or degrading artifice had been left untried in order to procure its universal corruption<sup>52</sup>, in order to destroy the established religion, and render the king an absolute despot.

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Popish Plot.

The new House of Commons, to evince their distrust of the Roman Catholics, enacted Stat. 30 Charles II., Stat. 2, by which a declaration was to be subscribed by members of both Houses of Parliament on taking their seats, against the idolatry of transubstantiation, the invocation of saints, and the sacrifice of the mass as practised in the Church of Rome; and that the declaration was made without any mental reservation or idea that it could be dispensed with by the pope<sup>53</sup>.

Stat. 30 Charles II., Stat. 2.  
Roman Catholic peers retire from parliament.

Having thus excluded the Roman Catholic peers from the legislature, the bill of exclusion against the Duke of York was revived; but a dissolution prevented its passing, and the bill was rejected by the lords in the next parliament<sup>54</sup>.

Bill of exclusion against the Duke of York.

Sir Leoline Jenkins contended that parliament could not disinherit the heir of the crown, and that if such an act should pass, it would be invalid in itself; but even modern authori-

<sup>50</sup> 7 State Trials, 259. 1 Kennet, 327, 337. 4 Parl. Hist. 1024, 1035. Rapin, ii. 688. Wellwood's Mem. 128. North's Examen, 129, 177, 196, 240. Ralph, 386. 1 Burnet, 555.

<sup>51</sup> Ibid.

<sup>52</sup> Pepys's Diary, October 6, 1666. North's Examen, 456. 2 Dalrymple, 92. 2 Hallam's Const. Hist. 537.

<sup>53</sup> The oath of supremacy had been taken by the commons, though not by the lords, and Roman Catholics were incapable of sitting in the Lower House before the act of 1679. The Long Parliament, in 1642, attempted to exclude them from the House of Lords. A bill for a similar purpose passed the commons in 1675, but was thrown out by the peers. (Journ. May 14, November 8.) It was brought in again in the spring of 1678. (Parl. Hist. 990.) In the autumn of the same year it was renewed, when the lords agreed to the oath of supremacy, but omitted the declaration against transubstantiation, so far as their own House was affected by it. (Lords' Journ. November 20, 1678.) They also excepted the Duke of York from the operation of the bill, which exception was carried in the commons by two voices. (Parl. Hist. 1040.) The Duke of York, and seven more lords, protested. (2 Hallam's Const. Hist. 580.)

<sup>54</sup> The second reading of the exclusion bill was carried, May 21, 1679, by two hundred and seven to one hundred and twenty-eight. (Parl. Hist. 1125—1191.)



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The constitution  
is a conditional  
contract between  
the prince and  
the people.

ties, viz., the statutes of Henry VIII. and Elizabeth, expressly recognise the contrary, and established the constitutional doctrine, that the reigning sovereign, with the consent of parliament, is competent to make any changes in the inheritance of the crown:—in fact, our constitution is, in the strictest sense, a bargain, a conditional contract, between the prince and the people, as it always hath been, and still is, between the representative and collective bodies of the nation: and if ever there was a presumptive heir to the crown that deserved to experience the practical application of that principle, it was the Duke of York, because he was engaged in direct opposition from all the essential principles of the British constitution; and the events of this period justify the assertion, that, to attain his religious objects, murder and perjury would have been no impediments.

#### 11. *Original Jurisdiction in Civil Causes claimed by the House of Lords.*

Case of Skinner.

A serious dispute arose, in 1668, between the two Houses on a question of privilege, the lords having claimed and exercised an *original* jurisdiction as the supreme court of judicature, in a purely civil cause between a trader of the name of *Skinner* and the East India Company. The lords having adjudged the latter to pay a sum of money as damages, the commons passed resolutions censuring the conduct of the lords as contrary to law, and derogatory from the right of the subject; and, upon their adjournment, declared, that whosoever should put in execution the orders or sentence of the House of Lords, should be deemed a traitor to the liberties of Englishmen, and an infringer of the liberties of the House of Commons.

Interposition of  
the king.

The lords were, however, undismayed, and committed the governor of the company, until he should have paid a fine to the king of 500*l*.<sup>1</sup> The king, however, ultimately interposed, all the proceedings were erased out of the Journals, and the question was not again discussed; but, from that period, original jurisdiction in civil causes has never been claimed by the lords<sup>2</sup>.

<sup>1</sup> 6 State Trials, 710—763. 12 Lords' Journ. 420, 427. 4 Parl. Hist. 422, 431. 1 Marvell, 107, 109. 4 Pepys, 103. 3 Hallam's Const. Hist. 32.

<sup>2</sup> 12 Lords' Journ. 287, 291. Com. Journ. Feb. 22, 1670. 4 Parl. Hist.

Although the lords did not entertain appeals from equity before 3 Charles I.<sup>3</sup>, yet no question can arise as to their ultimate jurisdiction in cases of appeal from the courts below<sup>4</sup>, and unless desuetude of a right for a number of years operates as a repeal of such right, the lords possessed an original jurisdiction; for it appears from the Rolls of Parliament, 1 Edward IV., 1461, they decided originally in a case which was cognizable in the courts of common law, without any protest against its illegality.

In 1621 and 1624, orders were frequently made on private petitions of an original nature. This jurisdiction was exercised at the commencement of the reign of Charles I., and in the case of a riot at Banbury, assumed the power of punishing a misdemeanour unconnected with privilege; and in the Long Parliament, they frequently punished misdemeanours, and awarded damages<sup>5</sup>.

In 1675, another controversy arose between the two Houses, under the following circumstances. Dr. Shirley having failed in a lawsuit against Sir John Fagg, a member of the commons, appealed from the decision of the chancellor to the House of Lords. The appeal was received, and Fagg was summoned to appear before that assembly. The commons thereupon maintained, that no member of the House could be summoned before the peers; and that the Upper House could receive no appeals from any court of equity, assertions against law and precedent, and only urged to serve a political object. The result was, that the process was never revived against Fagg. If the commons were sincere in making<sup>6</sup> the objection in the first instance, their subsequent intemperance, as well as that of the lords, proved their inability to have discussed the question as rational beings<sup>6</sup>.

The commons, in 1679, denied the right of the king to reject their speaker, when presented for approbation; but a compromise ensued, neither the nominee of the king, nor that

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The lords possessed an original jurisdiction.

Misdemeanours punished and damages awarded.

Case of Shirley.

Privilege of the commons as to the selection of their speaker.

431. 6 State Trials, 763—770. 3 Hatsell's Precedents, 336. Hargrave's Preface to Hale's Jurisdiction of the Lords, 101.

<sup>3</sup> Hale's Jurisdiction of the Lords, c. 33. Hargrave's Preface, 53.

<sup>4</sup> Stat. 27 Elizabeth, c. 8.

<sup>5</sup> Hargrave, 60. Lords' Journ. passim. 3 Hallam's Const. Hist. 25, 26.

<sup>6</sup> Lords' Journ. 679, 680, 691, 694, 700, 706, 710, 713, 716, 718, 720, 723, 725, 727, 729. Com. Journ. May 5, 15, 28; June 1, 4, 5, 8, 9. 1 Marvell, 517. 2 Burnet, 75. 4 Parl. Hist. 721. 6 State Trials, 1121. 7 Lingard, 593.

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of the commons, being allowed to take the chair: the privilege as to the election of speaker has ever since been vested in the commons, the king having the power of rejection, but not that of nomination<sup>7</sup>.

### 12. *Impeachment of Danby.*

The articles of  
impeachment.

The commons were so enraged at the communications of Montagu, by which the national interests were bartered to France, for pecuniary considerations, and justly suspecting the king of having uniformly acted in conjunction with the French king, resolved to punish the Earl of Danby, and voted six articles of impeachment against that minister, and carried them up to the House of Lords.

These articles were, that he had traitorously engrossed to himself regal power, by giving instructions to his majesty's ambassadors, without the participation of the secretaries of state or the Privy Council; that he had traitorously endeavoured to subvert the government, and introduce arbitrary power; and to that end, had levied and continued an army, contrary to act of parliament; that he had traitorously endeavoured to alienate the affections of his majesty's subjects, by negotiating a disadvantageous peace with France, and procuring money for that purpose; that he was popishly affected, and had traitorously concealed, after he had notice, the late horrid and bloody plot contrived by the papists against his majesty's person and government; that he had wasted the king's treasure, and that he had, by indirect means, obtained several exorbitant grants from the crown<sup>1</sup>.

The charges  
against Danby  
not comprehended  
in the Statute  
of Edward III.

The charges against Danby were not comprehended in the Statute of Edward III., and the mere words "treason" and "traitorously," could not change the "nature of things, or subject him to the penalties annexed to that crime." And the lords consequently refused to commit Danby; the commons insisted upon their demand, but a prorogation was soon after followed by a dissolution, and when the next House of Commons revived the impeachment, the lords voted the commitment of Danby without objection.

It is doubtful  
whether charges  
not essentially

It is, however, a question that is far from being settled, whether charges not essentially, in themselves, amounting to

<sup>7</sup> D'Ewes' Journal, 97, 459. Townsend, 35. 8 Lingard, 97.

<sup>1</sup> Com. Journ. Dec. 21, 1678.

high treason, can be recognised as such, by the mere technical adaptation of language, and whether, under such circumstances, the lords have the power of committal, but are not legally bound to treat such a charge as a misdemeanor.

This case has recognised two great constitutional rights;—first, that impeachments made by the commons in one parliament, continued from session to session, and parliament to parliament, notwithstanding prorogations or dissolutions<sup>2</sup>; secondly, that in cases of impeachments upon *special* matter shown, if the accused does not voluntarily withdraw, the lords admitted that, of right, they ought to order him to withdraw, and that afterwards he ought to be committed.

Another question arose, whether the king had a right to pardon, in cases of parliamentary impeachment. After the revival of the proceedings in the new parliament, Danby had absconded, but, being apprehensive of an attainder, surrendered himself, and pleaded a pardon from the king in bar of the prosecution<sup>3</sup>.

The commons resolved that the pardon was illegal and void, and ought not to be pleaded in bar of the impeachment of the commons of England; and demanded judgment at the lords' bar against Danby, as having put in a void plea.

As another proof of that sense of "impartial justice" which popular bodies display, when "seeking justice," the commons resolved, in order to prevent the accused from having counsel, that no commoner should presume to maintain the validity of the pardon pleaded by the earl, without their consent, on pain of being accounted a betrayer of the liberties of the commons of England<sup>4</sup>.

They likewise denied the right of the bishops to vote on the validity of this pardon; and demanded the appointment of a committee from both Houses to regulate the form and manner of proceeding on this impeachment, as well as on that of the five lords accused of participation in the popish plot<sup>5</sup>.

The lords reluctantly agreed to appoint a committee, but it was ultimately resolved that the spiritual lords had a right to sit and vote in parliament in capital cases, until

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high treason, can  
be made so, by  
the adaptation of  
language.

King's right to  
pardon in cases  
of impeachment.

The commons  
command that  
no commoner  
shall maintain  
the validity of  
the pardon  
pleaded by  
Danby.

The commons  
deny the right of  
the bishops to  
vote.

<sup>2</sup> Vide Impeachment of Mr. Hastings, in 1791, where this principle is recognised.

<sup>3</sup> Lords' Journ. April 25. 4 Parl. Hist. 1121. 2 Hallam's Const. Hist. 556, et seq.

<sup>4</sup> Lords' Journ. May 9, 1679.

<sup>5</sup> Ibid. May 10, 11.

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Parliamentary  
rights of the  
bishops.

judgment of death shall be pronounced<sup>6</sup>; against which vote the commons protested<sup>7</sup>, but a prorogation ensued, and the next parliament did not proceed with the impeachment.

With respect to the bishops' votes, a more unjust request could not have been urged; because, in the Constitutions of Clarendon, it is enacted, that the bishops and others holding spiritual benefices, "*in capite*," should give their attendance at trials in parliament, till it came to sentence of life or member, and the original privilege of the bishops to withdraw, is nothing more than one of the narrow superstitions of the canon law, and even when they do withdraw, it is under a protestation<sup>8</sup>. In this case, the king commanded that the bishops should be present and vote on the validity of Danby's pardon, observing, his prerogative was at stake, and experience must have taught them that their interest was closely bound up with that of the sovereign: because the debasement of the crown would be quickly followed up by that of the mitre<sup>9</sup>.

The question of the king's right to pardon, in cases of parliamentary impeachment, was left undecided in this case; but it was finally decided in the Act of Settlement<sup>10</sup>, which provides that no pardon under the great seal of England shall be pleadable to an impeachment by the commons in parliament.

This language tacitly concedes to the crown the right of granting a pardon after sentence, though not before sentence; the principle of which is, that inquiry should not be frustrated, so that the crimes of a minister can always be exhibited to public execration, and thus rendering him for ever powerless, as it is impossible a guilty and convicted minister can ever recover his moral influence in this country.

The prerogative of mercy was recognised upon the impeachment of the six peers who had been concerned in the Rebellion of 1715: the House of Lords, after sentence passed, having come to a resolution on debate that the king had a right to reprieve in cases of impeachment, addressed him to exercise that prerogative as to such of them as should deserve his mercy; and three of the number were, in consequence, pardoned<sup>11</sup>.

<sup>6</sup> Lords' Journ. May 13, 15, 17, 27, 1679.

<sup>7</sup> Com. Journ. May 26, 1679. 4 Hatsell's Precedents, 374.

<sup>8</sup> 8 Lingard, 116. Vide ante, 45, 46.

<sup>9</sup> Lords' Journ. 575, 577, 580, 584, 586, 587, 590, 594, 1679. Com. Journ. May 15, 26, 1679. 8 Lingard, 117.

<sup>10</sup> Stat. 12 & 13 William III. c. 2.

<sup>11</sup> 2 Hallam's Const. Hist. 562. 7 Parl. Hist. 283; sed vide etiam, 233.

The crown, in cases of parliamentary impeachment, has a right to grant a pardon after sentence.

Another important question relative to impeachment was also determined, in the case of Fitzharris, viz., that it was the right of the House of Commons to impeach before the House of Lords, any peer or commoner, for treason, or any other crime or misdemeanour<sup>12</sup>.

But the House of Lords made a standing order, that no peer should answer any accusation before the commons, in person, or by counsel, or by letter, under the penalty of being committed to the custody of the black-rod, or to the Tower, during the pleasure of the House<sup>13</sup>.

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Privilege of the commons to impeach before the House of Lords, any peer or commoner.

### 13. *Appropriation of Supplies.*

The commons, availing themselves of the increasing unpopularity of the king, and the embarrassments which the war with Holland had occasioned, claimed a right, and which was recognised, to appropriate the supplies to specified and limited purposes<sup>1</sup>, and for which precedents existed in the reigns of Richard II., Henry IV., and James I., and this system has been since invariably pursued, and caused the necessity of estimates being regularly submitted to the legislature.

The commons having become possessed of such privileges, claimed as an incident thereto, that of investigating the mode in which their moneys had been expended, and from the corrupt, criminal, and lascivious disposition of the public funds by the court<sup>2</sup>, and its satellites, insisted upon such a right being conceded, and accordingly a statute was passed<sup>3</sup>, investing commissioners therein named with very extensive and extraordinary powers, both as to auditing public accounts, and investigating the extensive frauds that had taken place in the expenditure of money, and employment of stores; and the result occasioned the expulsion of the treasurer of the navy from the House, for issuing money without legal warrant, and destroyed all confidence in the integrity of the government, as the commissioners reported unaccounted balances of 1,509,161*l.* besides much that was questionable in the payments<sup>4</sup>.

The commons claim a right of investigating the mode in which public moneys have been expended.

<sup>12</sup> Com. Journ. March 26, 1681. 4 Hatsell's Precedents, 54, and App. 347. 8 State Trials, 236. 12 Ibid. 1218.

<sup>13</sup> 12 Lords' Journ. 606, 608, 612. 7 Lingard, 568.

<sup>1</sup> Stat. 17 Charles II. c. 1. Com. Journ. Nov. 25, 1665. 4 Parl. Hist. 305. Vide ante, 132, 353.

<sup>2</sup> Pepys' Diary, Sept. 23, Oct. 8, Dec. 12, 1666.

<sup>3</sup> Stat. 19 & 20 Charles II. c. 1. <sup>4</sup> Burnet, 374; sed vide Ralph, 177.

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1649—1685.

ELECTION WRITS  
TO BE ISSUED BY  
THE SPEAKER  
DURING THE PRO-  
ROGATION.

The commons were likewise enabled to obtain another important privilege. During the prorogation, the chancellor, according to ancient precedents, issued writs to supply those seats which had become vacant in the House of Commons, the earliest trace of writs originating with the speaker, having occurred in 1640. The commons, however, insisted upon the speaker's right, and a resolution was passed, that the elections under the chancellor's writ were void, and that the speaker should alone issue the new writs<sup>5</sup>.

#### 14. *The Administration of Justice.*

Corruption of the  
judicial bench,  
and the ministers  
of justice.

The administration of justice during this reign, when any political object was to be acquired, was disgraceful to the government and to the judicial bench<sup>1</sup>, and the ministers of justice left no expedient untried in order to corrupt<sup>2</sup> and intimidate those who were summoned upon grand and petit juries;—to such an extent was this practice carried, that parliament was obliged to interfere<sup>3</sup>.

The panels were wilfully intended to be composed of those who were most to be relied upon for subserviency to the despotic measures of the court; and when juries presumed to act conscientiously, judges presided who were so base as to fine them for their verdicts: thus, as previously stated, the recorder of London, in 1670, imposed a fine of forty marks on each of the jury because they had acquitted Penn and Mead<sup>4</sup>.

Grand jury of  
Somerset summoned  
before the  
Court of King's  
Bench, for find-  
ing a bill against  
the orders of the  
judge of assize.

So likewise the grand jury of Somerset, having found a bill for manslaughter instead of murder against the advice of Chief Justice Keeling, were summoned before the Court of King's Bench, to answer for a misdemeanour for finding upon a bill of murder, "*billa vera quoad manslaughter*," against the directions of the judge. Upon their appearance, they were told by the court, being full, that it was a misdemeanour in them, for they were not to distinguish betwixt murder and manslaughter; for it is only the circumstance of malice which makes the difference, and that might be implied by the law, without any fact at all, and so it lies not in the judgment<sup>5</sup>.

<sup>5</sup> Com. Journ. Feb. 6, 1673. 4 Parl. Hist. 507—512. Parker, 262—265. 7 Lingard, 544.

<sup>1</sup> 7 State Trials, passim.

<sup>3</sup> Com. Journ. Oct. 16, 1667.

<sup>2</sup> 9 Ibid. 932.

<sup>4</sup> 6 State Trials, 967.

of a jury, but of the judge; that the intention of their finding indictments is, that there might be no malicious prosecution; and, therefore, if the matter of the indictment be not framed of malice, but is *verisimilis*, though it be not *vera*, yet it answers their oaths to present it. Mr. Justice Twisden said he had known petty juries punished in Lord Chief Justice Hyde's time, for disobeying of the judge's directions in point of law. But because it was a mistake in their (the grand jury) judgments rather than any obstinacy, the court discharged them without any fine or other attendance<sup>5</sup>.

Charles II. so far differed from his father, that he did not pursue similar measures of illegal taxation, or issue proclamations subversive of liberty,—except one, which was recalled, for shutting up of coffee-houses<sup>6</sup>: but the first might have proceeded from a dread of punishment, the latter in consequence of the non-existence of the Star Chamber and High Commission Courts.

The press was a constant source of annoyance, and every exertion was made to restrain its freedom of discussion<sup>7</sup>: thus, it was held by the judges, who had assembled by the king's command, that all books scandalous to the government, or to private persons, might be seized, and the authors, or those exposing them, punished; and that all writers of false news, though not scandalous or seditious, were indictable on that account<sup>8</sup>: and in another case, the judges ordered that a certain book should no longer be printed or published by any person whatsoever<sup>9</sup>.

General warrants were likewise issued to seize seditious libels, and apprehend their authors: in fact, no absolute check was put to general warrants until the decision of the Court of Common Pleas in 1764, although their illegality could not have been questioned<sup>10</sup>.

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1649—1688.

Illegal taxation  
not adopted by  
Charles II.

Attempts to re-  
strain the free-  
dom of the press.

General warrants  
issued.

<sup>5</sup> Pasch. 19 Charles II. Keeling, C. J.; Twisden, Wyndham, Merton, Justices. Hargrave MSS. 339. See *vide etiam* Com. Journ. Oct. 16, 1667.

<sup>5</sup> State Trials, 999. <sup>6</sup> Ibid. 1013.

<sup>6</sup> Kennet, 337. Ralph, 297. North's Examen, 139.

<sup>7</sup> Kennet's Register, 176. Stat. 14 Charles II. c. 33.

<sup>8</sup> 7 State Trials, 929. London Gazette, May 5, 17, 1680.

<sup>9</sup> 7 State Trials, 1127. <sup>8</sup> Ibid. 184, 197.

<sup>10</sup> 7 Ibid. 949, 956. <sup>3</sup> Hallam's Const. Hist. 7.



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1649—1685.

### 15. *Habeas Corpus Act.*

Although the common law had provided the writ of habeas corpus, and the Petition of Right had renewed and extended the provisions of Magna Charta against arbitrary imprisonment, yet their benefits had been curtailed to gratify the lusts of ambition.

Judges assumed discretionary power in granting the writ of habeas corpus.

The judges had assumed the power of granting or refusing the writ at discretion; the sheriffs and keepers invented pretexts to elude obedience; and the privy council hesitated not to send an obnoxious individual into some of the king's foreign dominions, and consequently beyond the jurisdiction of the courts<sup>1</sup>.

The judges bound to receive bail, in all bailable offences.

These evils were so apparent, that parliament were obliged to restore the ancient law for the protection of liberty, and which was productive of Stat. 31 Charles II. c. 2, commonly called the "*Habeas Corpus Act.*" It makes the granting of the writ upon a sight of the copy of the warrant of commitment, or an affidavit that a copy is denied, and the acceptance of bail for offences bailable by law, imperative on the chancellor and the judges, even during the time of vacation; except for persons convicted, or in execution, upon legal process, or where treason and felony are clearly expressed in the warrant of commitment.

Production of prisoners by the gaoler.

Under this writ, the gaoler must produce in court the body of the prisoner, and certify the cause of his detainer and imprisonment; if the gaol lie within twenty miles of the judge, the writ must be obeyed in three days, and so proportionably for greater distances, but in no case exceeding twenty days.

Refusal of the warrant of commitment by the gaoler.

A gaoler refusing his prisoner a copy of the warrant of commitment, or not obeying the writ, is subjected to a penalty of 100*l.* to the aggrieved; and for the second offence 200*l.*, and incapacitated from holding office; and even the judge illegally denying the writ, is liable to the penalty of 500*l.* at the suit of the party injured.

Indictment of the prisoner.

Every prisoner must be indicted the first term after his commitment, and brought to trial in the subsequent term; and no person, after being enlarged by order of the court, can be re-committed for the same offence.

<sup>1</sup> 6 State Trials, 1189. 4 Parl. Hist. 661, 1148. 3 Hallam's Const. Hist 14. 8 Lingard, 119. 8 Hume, 107. 1 Black. Com. 128, 135. Ibid. iii. 135, 354.

The statute likewise abolished the practice of sending persons out of the country, and consequently out of the jurisdiction of the courts, by making such expatriation an offence subject to the most rigorous penalties, and rendering the offender incapable of receiving pardon from the sovereign.

The 56 George III. c. 100, has not only extended the power of issuing the writ during the vacation, in cases not within Stat. 31 Charles II. c. 2, to all the judges, but enables the judge, before whom the writ is returned, to inquire into the truth of facts alleged therein; and in case they shall seem to him doubtful, to release the party in custody, on giving surety to appear in the court to which such judge shall belong, on some day in the ensuing term, when the court may examine by affidavit into the truth of the facts alleged in the return, and either remand or discharge the party according to its discretion.

It is impossible to question the wisdom of these enactments, for where the liberty of the subject is concerned, the landmarks, by which the discretion of the committing magistrate is to be regulated, should be accurately defined, and positive in their nature; for the arbitrary discretion of *any* man is the law of tyrants,—it is always unknown, it is different in different men, it is casual, and depends upon constitution, temper, and passion: in the best, it is oftentimes caprice; in the worst, it is every vice, folly, and passion, to which human nature is liable.

#### 16. *Quo Warranto Informations.*

The power which principally opposed the court, was that which resided in corporate cities, and as long as it existed, the papistical and tyrannical doctrines of the House of Stuart could never succeed; consequently, every exertion was resorted to by the king in order to acquire an uncontrolled ascendancy over them<sup>1</sup>.

The policy of Elizabeth was pursued, by the creation of "select bodies" in the corporations,—that is, by illegally wresting from the inhabitant householders their constitutional municipal elective rights, and vesting such franchises with the power of admitting non-residents in a few individuals, whose qualifications exclusively consisted in an utter subserviency to

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1649—1685.

Practice of sending persons out of the country before trial, abolished.

Stat. 56 George III. c. 100, extended the authority of the judges under Stat. 31 Charles II. c. 2.

The arbitrary discretion of any man, is the law of tyrants.

Every exertion to influence the inhabitants of corporate cities, &c.

Creation of "select bodies."

<sup>1</sup> Echard, 1043, 1045. Bulstrode, 388. North, 624—627.

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everything that was infamous and degrading:—from the effects of such policy arose the necessity for the recent “Municipal Corporation Act.”

Corporation Act  
of 1661 produc-  
tive of mischief.

The 13 Charles II. c. 1, for the “well-governing and regulation of corporations,” was productive of great mischiefs, as it afforded an excuse and precedent for non-residence; the commissioners removing those persons who had been illegally placed in office by the commons, and substituting in the stead of several of them, some of the great officers of state, and these instances were subsequently cited in order to support the claims of the non-residents.

Alterations in  
the municipal  
records.

It is however a fact, which justifies a suspicion of fraud in order to veil the illegal origin of “non-residents,” that the admission books in most of the boroughs, previous to 1660, are destroyed, and commence at a period when non-residents were permitted to exercise the rights of burgess-ship.

Charter to Liver-  
pool.

In 1677, the king granted a charter to Liverpool, which appointed a common council of sixty persons therein nominated, thirty of whom, together with the mayor and bailiffs, were *to have power to elect and name* the mayor, bailiffs, common council, and freemen of the town,—thereby placing the whole power in their hands.

The burgesses protested against this grant, and several of the common councilmen nominated, in the charter, refused to act under it, and tumults took place in the town. But the spirit of the times stifled all opposition, and the common council continued to exercise the whole authority till the charter of William III.

Origin of the  
doctrine, that  
municipal char-  
ters may be  
granted and an-  
nulled as pleased  
the crown.

Charters of this nature were introductory of the general doctrine, that “municipal rights and privileges exclusively depended upon charters of incorporation, and that such charters might be surrendered, granted, and annulled as pleased the crown;” and from the proclamation for the restoration of corporations by James II., in the fourth year of his reign, 1679 appears to be the period at which great irregularities in the granting of charters were committed.

It was requisite for Charles II., previous to his giving charters embodying the foregoing principles, that the governing charters should be surrendered, and Chief Justice Jefferies and Earl Bath were two of his most powerful and unprincipled tools.

The modes in  
which surrenders

The manner in which surrenders were obtained, was by

fraud and violence; thus, in Thetford; the mayor was detained in prison until he procured the surrender of the charters,—which he effected, although there were seventeen against the surrender, and only fourteen in favour of it; but the former were never summoned when the surrender was agreed upon: and the mayor, in order to procure an assembly of the requisite number, admitted his son, a boy under sixteen years of age, and an excommunicated person, as members of the corporation.

If, however, neither the king nor his ministers could by means of falsehoods or threats prevail on the burgesses to surrender their charters, informations of *quo warranto* were filed against them. Thus Roger North, in his *Life of the Lord Keeper Guildford*, says,—“Either to court or frighten harmless or orderly corporations to surrender, or upon refusal to plunge them in the chargeable and defenceless condition of going to law against the crown, whereby that which would not come by fair means, was extorted by violence<sup>2</sup>.”

Roger North also says,—“that the trade of charters ran to excess, and turned to an avowed practice of garbling corporations for the purpose of carrying elections to the parliament.”

Chief Justice Jefferies, when on circuit as a criminal judge, by threats and machinations compelled Lincoln and other towns to surrender their charters.

In the debate which arose on the Corporation Bill, in the reign of William and Mary, Sir Thomas Clarges stated, that he knew a corporation of 600*l.* per annum advised by Jefferies to surrender, or else, if judged against, the lands would go to the next heir of the grantor.

Sir William Williams, in the same discussion, said,—“that in some corporations of six hundred who had a right to give consent to a surrender, not above thirty-four were for it, and they prevailed. And how came this about?—this was a packed common council by Lord Jefferies.”

But for such proofs of loyalty, and triumph over national freedom, Jefferies was received by Charles II. at Windsor, as one of the most distinguished ornaments of the bench<sup>3</sup>.

The Earl of Bath was equally industrious in the West, and returned from Cornwall only the day after the king's death with powers of attorney to surrender the charters of thirteen

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of municipal  
charters were  
obtained.

Garbling of cor-  
porations for  
parliamentary  
elections.

A corporation,  
having 600*l.* per  
annum, advised  
by Jefferies to  
surrender.

Surrenders from  
thirteen bo-  
roughs procured  
by the Earl of  
Bath.

<sup>2</sup> Roger North, in his *Life of Lord Keeper Guildford*, 115.

<sup>3</sup> 3 Kennet, 423. M. & S. Hist. Boroughs, 1689—1943.

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National privileges in a state of insecurity.

or fourteen boroughs: and he was said to have "no less than fifteen charters, so that some called him the 'Prince Elector,' and he put into those charters for Cornwall the names of various officers of the guards\*."

These proceedings, as Hume correctly observes, "left no national privileges in security, but enabled the king, under like pretences, and by means of like instruments, to recal anew all those charters which at present he was pleased to grant. And every friend to liberty must allow, that the nation, whose constitution was thus broken in the shock of faction, had a *right* by every prudent expedient, to recover that security, of which it was so unhappily bereaved<sup>5</sup>."

### 17. *Attempts to create an Absolute Monarchy.*

The plan of influencing the commons by bribes, reduced to a regular system.

Lord John Russell observes<sup>1</sup>, that, "It was in this reign that the plan of influencing the members of the Lower House by gifts and favours of the crown was first systematically framed. The name of 'Pensioner Parliament,' given to the House of Commons which sat for seventeen years without dissolution, is a sufficient index of the general opinion concerning it. Many of the poorer members sold their vote for a very small gratuity. Offices and favours were granted to the speakers most worth buying; the rest were glad of a sum of money. The trifling sum of 12,000*l.* was allowed by Lord Clifford, for the purpose of buying members. This was increased by Lord Danby. By the report of a committee of secrecy appointed in 1678, it appears that many members received money or favours of one kind or another for their votes.

"There can be no doubt that the practice was continued during the reign of William. Sir John Trevor was convicted, when speaker, of receiving bribes from the city of London, to procure the passing of the Orphans' Bill. Mr. Hungerford was expelled for the same offence."

Insidious attempts to create an absolute monarchy.

In addition to these practices, there was every insidious attempt to create an absolute monarchy; and for the consummation of such base and infamous ends, scarcely any circumstances could have been more favourable than the "popish plot," the "insurrections of Russell and Sydney," and the

<sup>4</sup> Evelyn's Memoirs, 561.

<sup>5</sup> 8 Hume, 181, 182.

<sup>1</sup> Essay on the English Government, 186, ed. 1821. M. and S. Hist. Boroughs, 1837, 1838.

“violence of the commons,”—which created a party for the king, that he would not otherwise have possessed; and so effectually did the court emissaries work upon the popular passions, that under the apprehension of a recurrence to the disorders of Charles I. the doctrine of passive obedience was generally received<sup>2</sup>, and our liberties were, in the greatest danger of being absolutely surrendered to the perfidious keeping of Charles II.; but his death,—and the less hypocritical policy of James II.—preserved them from ultimate destruction.

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1649—1685.

Doctrine of passive obedience generally received.

The reign of Charles II. was, as Mr. Hallam observes, the transitional state between the ancient and modern schemes of the English constitution; between that course of government where the executive power, so far as executive, was very little bounded except by the laws, and that where it can only be carried on, even within its own province, by the consent and co-operation, in a great measure, of the parliament<sup>3</sup>.

The reign of Charles II. was the transitional state of the English constitution.

#### SECTION IV.

JAMES II., February 6, A.D. 1685,—February 13, A.D. 1689.

##### 1. Duplicity of James II.

- |                                   |                                      |
|-----------------------------------|--------------------------------------|
| 2. The Parliament of 1685.        | Unconstitutional Exercise of the     |
| 3. Prerogative of Dispensation.   | Prerogative.                         |
| 4. The Ecclesiastical Commission. | 6. The Expulsion of James justified. |

##### 1. *Duplicity of James II.*

James II. commenced his reign, similar to that of Mary, by a wilful falsehood, voluntarily promising the privy council to preserve the government, both in church and state, as it was then by law established.

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The king had, however, on a previous occasion, expressed sentiments of a similar description; thus, in 1678, when the “test” was discussed, he managed to introduce a proviso, for excepting himself;—and it is asserted, in Burnet’s History, that, “speaking with great earnestness and with tears in his eyes, he solemnly protested, that whatever his religion might be, it should only be a private thing between God and his own soul, and that no effect should ever appear in the

Declaration of James, in 1678.

<sup>2</sup> Mackenzie, *Jus Regium*, 39, 46. Collier, 902. 8 Somers’ Tracts, 420.

<sup>3</sup> 2 Hallam’s Const. Hist. 481, 482.

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government;" but unfortunately, the records of history belie that promise; and prove his total repugnancy from the preservation of the constitution, and all his lawless proceedings may be ascribed to his anxiety of introducing his papistical creed; in fact, every situation of power, honour, or emolument, was forcibly wrested from the holders, and bestowed upon his worthless parasites, until the nation, roused by such infamy, justly drove him from the country, over which he might have reigned so nobly, to close his days amidst the insignificance of St. Germaine's, and the squalid penances of La Trappe.

Illegal taxation.

The parliamentary grant of one-half of the excise, and of the whole of the customs, expired at the death of Charles II., and the king, to evince his respect for the constitution, illegally ordered the continued exaction of such duties, till the meeting of parliament.

Religious prosecutions discouraged.

James likewise commanded the judges to discourage prosecutions on matters of religion, and ordered, by proclamation, the discharge of all persons who were confined for refusing the oaths of allegiance and supremacy. In consequence, the dissenters enjoyed a respite from the restrictions which they suffered under the Conventicle Act; and Catholics, to the number of some thousands, and Quakers to the number of twelve hundred, were liberated from imprisonment<sup>1</sup>.

The king likewise evinced his attachment to the Romish church by going publicly to mass; and, in order to crush any expression of public indignation, borrowed money from the King of France<sup>2</sup>.

## 2. *The Parliament of 1685.*

Boroughs in slavish dependence on the crown.

The open and direct attacks which Charles II., towards the close of his reign, made upon most of the corporations, had, in so many instances, been submitted to, that the boroughs were in the power of the crown; for all the new charters contained clauses of election and amotion, by which the king controlled the parliamentary and municipal elective franchise<sup>3</sup>.

<sup>1</sup> 2 Sewell, 451, 454, 456, 478, edit. 1795. 8 Lingard, 303.

<sup>2</sup> Letters of Barillon, published in App. to Fox, April 16, May 17, July 16, and those of Louis, July 26, and December 6.

<sup>3</sup> Reresby's Mem. 272. Com. Journ. May 27, 29, 1685. Lonsdale, 5, 8. 3 Burnet, 38. Barillon, in Fox, App. 90, 95.

All arts were used to obtain such returns as would form a parliament to the king's mind, and complaints were transmitted from all parts of England of the injustice and violence used in the elections, beyond what had ever been practised in former times.

The parliament was assembled on the 19th of May, 1685, and the foregoing "methods were so successful, that when the members were all returned, the king said there were not above forty members but such as he wished;"—in truth, most of them were furious and violent courtiers, and seemed resolved to recommend themselves to the king by putting everything in his power. This gave all thinking men a melancholy prospect.

"All people saw the way for packing a parliament. A new set of charters and corporation men, if those now named should not continue to be compliant, was a certain remedy to which recourse might be had. Of this parliament it was said, that in all England, it would not have been easy to find five hundred so weak, so poor, and so devoted to the court as those were."

The king, on the meeting of parliament, repeated the declaration which he had made to the privy council, of governing according to the laws, and preserving the established religion, and stated his expectation, that they would settle on him for life the revenue which had been enjoyed by his brother. "I might use many arguments," said he, "to enforce this demand;—the benefit of trade,—the support of the navy,—the necessities of the crown,—and the well being of the government itself, which I must not suffer to be precarious. But I am confident, that your own consideration and your sense of what is just and reasonable, will suggest to you whatever on this occasion might be enlarged upon. There is, indeed, one popular argument," added he, "which may be urged against compliance with my demand: men may think that by feeding me from time to time with such supplies as they think convenient, they will better secure frequent meetings of parliament: but as this is the first time I speak to you from the throne, I must plainly tell you, that such an expedient would be very improper to employ with me, and that the best way to engage me to meet you often, is always to use me well\*."

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Interference  
with the parlia-  
mentary elective  
franchise.

Character of the  
first parliament.

The king's threat  
to assume arbi-  
trary powers.

\* 14 Lords' Journ. 9. 8 Hume, 220, 221.



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This can only be considered as a public manifestation of contempt for the laws, a threat to assume arbitrary power, and an attempt to intimidate all oppositionists;—but for such a “gracious disposition,” the members of that degraded House of Commons, rent the air with their sycophantic yells<sup>3</sup>,—and more fully to evince their gratitude, abstained from any complaint as to the king’s illegal exaction of duties, and his pecuniary wishes were complied with to a greater extent than he had required<sup>4</sup>.

Power is to be watched in its first encroachments, and nothing is gained by timidity and submission.

It might be urged that the commons were desirous of conciliating their new sovereign<sup>5</sup>, but it should have been remembered, that power is to be watched in its very first encroachments, and that nothing is gained by timidity and submission; that every concession adds new force to usurpation; and, at the same time, by discovering a dastardly spirit, inspires the enemy with new courage and enterprize.

The ill success which had attended the rebellion of Monmouth, inspired the king with boldness to pursue his vile machinations:—accordingly parliament was summoned, in order to acquire its consent to the establishment of a standing army<sup>6</sup>,—the employment of Roman Catholic officers<sup>7</sup>,—and a repeal of the Habeas Corpus Act<sup>8</sup>.

From the employment of Roman Catholic officers in the army, the suspicious of his intentions to subvert the established religion, excited universal fears, and the commons were called upon by their constituents, to support the constitution<sup>9</sup>.

A supply required, to support a standing army.

The king acquainted the two Houses, that the militia, which had formerly been so much magnified, was now found, by experience in the last rebellion, to be altogether useless; and he required a new supply, in order to maintain those additional forces which he had levied. He also took notice, that he had employed a great many Catholic officers, and that he had, in their favour, dispensed with the law, requiring the “test” to be taken, by every one that possessed any public office: and to cut short all opposition, he declared, that, having reaped the benefit of their service during such times

<sup>3</sup> 3 Evelyn, 159.

<sup>4</sup> 14 Lords’ Journ. 21, 44, 65. Lonsdale, 64.

<sup>5</sup> 8 Hume, 221, 222.

<sup>6</sup> Lonsdale’s Memoirs, 18.

<sup>7</sup> 8 Lingard, 352.

<sup>8</sup> Reresby, 110. Dalrymple, 166, 170, 171, 177. Barillon, in Fox, Ap 93, 127. 8 Lingard, 353.

<sup>9</sup> Barillon, in Fox, 132, 135. 3 Burnet, 81.

of danger, he was determined, neither to expose them afterwards to disgrace, nor himself, in case of another rebellion, to the want of their assistance<sup>10</sup>.

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The House of Commons considered the speech by paragraphs, and resolved to grant a supply; but at the same time, that they might mark their disapprobation of the measure suggested by the king, accompanied it with a bill for the improvement of the militia.

Instead of assenting to his proposal in favour of the Roman Catholic officers, they promised to relieve them from the penalties by a bill of indemnity, and prayed him, since to keep them in employment was to dispense with the law without authority of parliament, to give such orders for their discharge as might remove all apprehension and jealousy from the hearts of his faithful subjects.

Parliament request the discharge of Roman Catholic officers.

Before this address was presented, 700,000*l.* was voted as a present supply.

The king, when the address was presented, denied its prayer with intemperate language; the commons, with a vile spirit, submissively proceeded to the consideration of the supply, and established funds for its payment<sup>11</sup>.

The lords then commenced an opposition to the measures of the crown,—the Bishop of London successfully moving the appointment of a day for taking the king's speech into consideration; but such was the disappointment and vexation of the king, that he prorogued the parliament; and when he found, by private "closetings," it was impossible to make them his instruments, for the destruction of the church, they were dissolved; and a universal belief was then engendered, he meant to govern the country without parliaments<sup>12</sup>.

Opposition by the lords to the tyranny of the crown.

### 3. *Prerogative of "Dispensation."*

James being determined to rely upon his prerogative of "dispensation," patents under the great seal were issued, discharging the Roman Catholic officers in the army, from the penalties to which they were liable, by Stat. 25 Charles II. c. 2,

<sup>10</sup> 8 Hume, 239.

<sup>11</sup> Com. Journ. Nov. 12, 13, 16, 17, 18, 20, 1685. Barillon, in Fox, 129—141, 146. Reresby, 215—220. 3 Burnet, 85. Dalrymple, 172. Parl. Hist. 1367—1368.

<sup>12</sup> 14 Lords' Journ. 88. Reresby, 220, 222. 3 Burnet, 85. Dalrymple, 172. 8 Lingard, 360.

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and enabling them to hold their commissions, “any clause in any act of parliament notwithstanding.”

Tampering with  
the judges.

As it was requisite to have a legal decision upon the question, the judges were privately consulted, who having, with the exception of four, who were immediately dismissed from office, held the legality of the dispensation, upon the principle that the kings of England were sovereign princes; that the laws of England were the king's laws, and that it was consequently an inseparable prerogative of the crown, to dispense with penal laws in particular cases, and upon necessary occasions, of which necessities and reasons it was the sole judge. A “mock trial” for penalties was had against one of the Roman Catholic officers, and the prerogative publicly allowed<sup>1</sup>.

Dispensing  
powers of the  
crown.

Although the king could not dispense with the common law, nor with any statute prohibiting that which was *malum in se*, nor with any right or interest of a private person or corporation, it is questionable whether James did not possess the power of dispensation under other circumstances, and which had been claimed and exercised by his predecessors<sup>2</sup>, and parliament had recognised this power, when they enacted the law against aliens in the reign of Henry V.<sup>3</sup>, and also when they passed the Statute of Provisors<sup>4</sup>; but it is equally clear that such a power was subversive of the principle upon which legislative authority is established.

The “Test Act,” which was now rendered ineffectual, had ever been conceived the great barrier of the established religion under a popish successor: as such it had been insisted on by the parliament; as such, granted by the king; as such, during the debates with regard to the exclusion, recommended by the chancellor<sup>5</sup>,—and the people justly thought, that the power of dispensation ought no longer to be entrusted to the crown.

The Anglican  
clergy silenced.

The clergy having declaimed against the erroneous doctrines imputed to the Church of Rome, and having exhorted their hearers, in warm language, to a steadfast adhesion to the reformed faith<sup>6</sup>, were ordered by the king, in virtue of his

<sup>1</sup> Barillon, Jan. 10, Feb. 25, April 25, May 2, 1687. 8 Lingard, 372. 12 Rep. 18.

<sup>2</sup> 7 Parl. Hist. 132. 11 State Trials, 1165—1199. 7 State Trials, 205. 5 State Trials, 171. 12 Rep. 18. 7 Rep. 1—28. Vide etiam Treatises of Sir Edward Herbert, Sir Robert Atkins, and Mr. Atwood.

<sup>3</sup> Rot. Parl. 1 Henry V. n. xv.

<sup>4</sup> Ibid. xxii.

<sup>5</sup> 8 Hume, 248.

<sup>6</sup> 1 Ellis's Corresp. 3, 6. Reresby, 226. 3 Evelyn, 199.

ecclesiastical supremacy, to lay aside questions of controversy, and to confine their discourses to subjects of moral divinity and of a holy life.

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1685—1689.

The Dean of Norwich having disobeyed such injunctions, the Bishop of London received orders to suspend him, but his lordship only advised him to remain silent until the king was satisfied with the propriety of his conduct. This disobedience to the royal mandate, served as a pretext for an Ecclesiastical Commission.

Disobedience to the royal mandate, by the Bishop of London.

#### 4. *The Ecclesiastical Commission.*

By Stat. 1 Elizabeth, c. 1, the crown had power to appoint persons to exercise its ecclesiastical authority, and to visit, redress, correct, and amend all errors, schisms, offences, contempts, and enormities, which by any manner of ecclesiastical power, could be lawfully redressed, corrected, and amended.

Ecclesiastical authority that was granted to Elizabeth.

By 16 Charles I. c. 11, the clause granting that power was repealed, and all letters patent, erecting new courts, similar to the High Commission Court; and all powers and authorities granted thereby, were declared utterly void and of no effect. But the 13 Charles II. c. 12, while it put down the High Commission Court, with its extraordinary powers of imposing fines, committing to prison and tendering the oath, *ex officio*, preserved to the spiritual courts the exercise of their ordinary jurisdiction; and to the crown, that of its ordinary supremacy.

Stat. 16  
Charles I. c. 11.

Stat. 13  
Charles II. c. 12.

The king, after a consultation with the judges, was by them advised to appoint a standing Court of Delegates, with ordinary powers to hear and determine ecclesiastical causes, and to pronounce on offenders ecclesiastical censures.

But a commission was appointed, by which seven commissioners were vested with full and unlimited authority over the Church of England. On them were bestowed the same inquisitorial powers, possessed by the former Court of High Commission<sup>1</sup>: they might proceed upon bare suspicion; and the better to set the law at defiance, it was expressly inserted in their patent, that they were to exercise their jurisdiction, any law or statute to the contrary. The king's design

Appointment of Ecclesiastical Commissioners, by James II.

<sup>1</sup> 11 State Trials, 1132. Ralph, 929. Vide ante, 393, 442.

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1685—1689.

Citation of the  
Bishop of  
London.

to subdue the church, was now positively known<sup>2</sup>; and had he been able to establish the authority of this new erected court, his success was certain<sup>3</sup>.

The Bishop of London having been cited to appear before them, to answer for his contempt in not suspending Dr. Sharpe, they refused to listen to his plea in bar of their jurisdiction; and rejected his absolute right to be tried by the metropolitan and his suffragans. He then alleged that to comply with the royal mandate, by any judicial act, was not in his power, because the offence had never come judicially before him, but that he had complied with it in substance, by advising and inducing Sharpe to abstain from preaching<sup>4</sup>. This not being considered matter of justification, the commissioners suspended his lordship and the dean from their offices.

### 5. *Unconstitutional Exercise of the Prerogative.*

The king having encamped an army on Hounslow Heath, to suppress every expression of constitutional feeling, the Roman Catholics were alone intrusted with the offices of state<sup>1</sup>, and, not content with granting dispensations to particular persons, assumed a power of issuing a declaration of general indulgence, and of suspending at once all the penal statutes, by which a conformity was required to the established religion.

Reasons which  
influenced James  
II. to attack the  
universities.

From a document, left in the cabinet of James II.<sup>2</sup>, it appears that the reduction of the universities was considered of the greatest importance, as being a "formed army against the Roman Catholic church," as it is there stated, "The whole nation seems to attend to these as an example, by which they may safely form their faith: here lies the heat and strength of that great opposition the Catholic truth encounters;" the king therefore left no expedient untried, to introduce the papists, who could only be regarded as the open and avowed enemies of such institutions. The university privileges were unhesitatingly attacked, and public and private property was illegally seques-

<sup>2</sup> Echard, 1085. <sup>3</sup> Burnet, 153. Barillon, April 17, May 12, June 2, 1687. <sup>4</sup> Mazure, 130.

<sup>3</sup> 8 Hume, 254, 255.

<sup>4</sup> 8 Lingard, 376.

<sup>1</sup> 1 Ellis' Corresp. 149. James' Mem. 74, 77. Barillon, July 22, 29. Nov. 21, 1686.

<sup>2</sup> Steph. Corp. Ref. Lond. 1835, 53 et seq. where this document is printed at length.

trated from those who were associated with the universities,—because they adhered to their duty, their oaths, and their religion; and it was palpable, that all ecclesiastical, as well as civil preferments, were intended to be bestowed on such as, negligent of honour, virtue, and sincerity, would basely sacrifice their faith to the reigning superstition<sup>3</sup>.

Such was the “Constitution,” when the parliament assembled, for the last time, on April 28, 1687, and which was shortly afterwards dissolved, the king intimating that he should have a new one before winter. He then resolved upon making a progress through the western counties, which he effected, but was received so coldly as to be disgusted.

When he returned, he resolved to change the magistracy in the several cities. The “Regulators,” a board established under the pretext of reforming the abuses in corporations, received orders to mould those bodies in conformity with the views of the court, and instructions were given to the lord-lieutenants of counties, to make out lists of persons devoted to the cause, and, on that account, fit to be appointed mayors and sheriffs, so that the returning officers might be in the interest of the crown<sup>4</sup>; and, secondly, to assemble their deputies and the magistracy, and to put to each individual the three following questions: “If you are chosen to the next parliament, will you vote for the repeal of the Test Act, and of the Penal Laws? Will you give your aid to those candidates who engage to vote for that repeal? Will you support the Declaration for Liberty of Conscience, by living peaceably and like good Christians, with men of different religious principles?” These orders were promptly executed, as evinced by the long list of orders of amotion in the Council Book of this reign, commencing with Chester.

In 1688, the king published a second declaration of indulgence, very similar to the one that had been issued, commanding it should be read in all the churches, by the officiating clergymen,—thus adding insult to injury.

Some of the bishops, with a spirit worthy of their order,

JAMES II.  
1685—1689.

Board of Regulators established, for the pretended reformation of corporate abuse.

Declaration of indulgence in 1688.

<sup>3</sup> 8 Hume, 264. 8 Lingard, 403. 11 State Trials, 1315—1340. 12 State Trials, 1 & 2 James, 119, 124, 125—127. Hist. Eccles. Com. 25, 30—52. Barillon, May 19, 1687. 1 Machp. Papers, 274. 12 State Trials, 54, 55, 69. Kennet, 475. 3 Burnet, 143—150. 3 Dodd, 469. 2 Burnet, 219. 1 Gutch, Col. Cur. 287. Reresby, 133. 2 Clarendon's Papers, 278.

<sup>4</sup> 3 Burnet, 183. Kennet, 469, 470. Dalrymple, 223. Lonsdale, 15, 16, 19. Reresby, 251. Bourepaus, Dec. 4, 1687. Life of James, 139.

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refused compliance, protesting that the declaration could not be read either in prudence or in conscience: not in prudence, for three reasons; because it was contrary to the interest of the church, because it would be taken as a proof of their approbation or their cowardice, and because it would lead to the reading of other, and perhaps, still more offensive papers; nor could they read it in conscience, because it contained illegal matter, as it presupposed not merely a dispensing, but even a disannulling power in the crown<sup>5</sup>.

The bishops, universities, and trial by jury, preserved the constitution.

For such refusal and protest, they were summoned to appear before the Privy Council<sup>6</sup>, were committed to the Tower<sup>7</sup>, for publishing a seditious libel, but were acquitted by a jury of their country<sup>8</sup>; and it was the verdict of that jury, combined with the undaunted spirit of the bishops and the universities, that preserved the English Constitution, and roused the nation to inflict a commensurate punishment upon their sovereign, by soliciting the Prince of Orange to assume the reins of government.

#### 6. *The Expulsion of James justified.*

The people have an inherent right forcibly to resist the illegal encroachments of the crown.

When James II. violated the fundamental laws of the Constitution, executed an avowed system of tyranny, and established slavery as a political, a moral, and a religious obligation, there cannot be a doubt but that the people were entitled to resist his encroachments, and to adopt such precautions as were requisite for the preservation of their liberties.

In fact, to deny such a proposition would be to maintain that government is intended for those who govern, not for the community at large, and that the general happiness of the human race should be sacrificed to the private interest or caprice of a few individuals.

The king and people derive their privileges from the same source.

The statute and the common law are the sources from which alone the king derives his rights; they are the only sources from which the people derive their rights<sup>1</sup>.

<sup>5</sup> 12 State Trials, 453. Clarendon's Diary, 171. 2 James, 152. Kennet, 482, 483. State Tracts, 430. Lonsdale, 26—28. 1 Gutch, 335—338.

<sup>6</sup> 8 Hume, 269. 8 Lingard, 444.

<sup>7</sup> 2 James, 158. 12 State Trials, 198, 455—462. 2 Clarend. Corr. 175, 177. App. 481—484.

<sup>8</sup> D'Oyly's Life of Sancroft, 250. 12 State Trials, 277—431, 473. 3 Burket, 222—226. 1 Macpherson, 266. 2 Ellis Cor. 7—12. Clarend. Diary, 179, 180. Hist. Eccles. Com. 53—60.

<sup>1</sup> Bolingbroke's Dissert. on Parties.

"A king of Great Britain," as Bolingbroke observes, "is a member, but the supreme member, or the head, of a political body. Part of one individual, specific whole, in every respect; distinct from it, or independent of it, in none; he cannot move in another orbit from his people, and, like some superior planet, attract, repel, influence, and direct their motions by his own. He and they are parts of the same system, intimately joined and co-operating together, acting and acted upon, limiting and limited, controlling and controlled by one another; and when he ceases to stand in this relation to them, he ceases to stand in any."

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1685—1688.

It is clear, that the tenets of the Romish church were inconsistent with the British Constitution, because they recognised the pope as superior to all law<sup>2</sup>, who, by the plenitude of his power, was entitled to make right wrong, and wrong right<sup>3</sup>; to make virtue vice, and vice virtue; to dispense with all laws human and divine; and to do all things above law, without law, and against law: principles subversive of any system of government like ours, and accordingly we see this *imperium in imperio* caused the most dreadful contests in the early periods of our history.

Tenets of the Roman Catholic church inconsistent with the British Constitution.

It was, however, impossible for James II. to have pursued any other course, than that of attempting, as he did, to destroy the English Constitution, for the Canons of the Roman Catholic church, and his duties to that church, required him, as a divine obligation, not only to oppose the progress, but to prohibit and suppress the profession of every religion but his own,—for toleration was inconsistent with the canonical laws, which have rejected schism and heresy from the bosom of the church, and the Christian emperors always thought it incumbent upon them, to maintain those laws, and secure their execution.

Canons of the Romish church suppress the profession of every religion but their own.

James II., therefore, was religiously bound to disobey the fundamental laws of this country, when they protected the public profession and spreading of doctrines, which were incompatible with the creed of the Roman Catholic church. In fact, wherever the constitution of a state gave *equal* favour and protection to all religions, such a constitution was at

*Equal* favour and protection to all religions, is inconsistent with the Roman Catholic doctrines.

<sup>2</sup> Bozius, cited by Foulis, 98. 6 Barrow, 5, 6, 9, 11.

<sup>3</sup> 2 South's Sermons, 115. 6 Barrow, 230. Decreta, Par. I, Dis. 96, ff. 107. Paris. 1518. Southey's Book of the Church, 189—191.



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1685—1689.

Attachment of  
the House of  
Brunswick to  
constitutional  
liberty.

direct variance with the laws of the infallible Romish church. If such a constitution prevailed, the discipline and existence of the Roman Catholic church were compromised, and she held her disciples to be justified in renouncing their allegiance; if the church prevailed, it was lawful to exterminate all those who were schismatics or heretics.

It must, however, be a source of the purest pleasure, and of future confidence to the present generation, that those illegal and infamous proceedings which characterized the reign of the second James, have been finally baffled by the accession of the House of Brunswick to the British throne, who upon no one occasion have betrayed their sacred trusts, or deviated from an inviolable attachment to the joint cause of the “English Catholic Church” and “Civil Liberty.”

#### SECTION V.

WILLIAM III., February 13, A. D. 1689,—March 8, A. D. 1702.

- |                                                           |                                           |
|-----------------------------------------------------------|-------------------------------------------|
| 1. The Executive Power intrusted to the Prince of Orange. | 5. Act of Toleration.                     |
| 2. Declaration, and Bill of Rights.                       | 6. Settlement of the Revenue.             |
| 3. Acts of Settlement.                                    | 7. Triennial Bill.                        |
| 4. Municipal Institutions.                                | 8. The Basis of the English Constitution. |

WILLIAM III.  
1689—1702.

First proclamation  
of William

#### 1. *The Executive Power intrusted to the Prince of Orange.*

The Prince of Orange, previous to his landing, published a proclamation, wherein, after referring to the surrenders and new grants, and other acts of tyranny, he stated, “therefore it is that we have thought fit to go over to England, and we now think fit to declare, that this our expedition is intended for no other design but to have a free and lawful parliament assembled as soon as possible: and that in order to this, all the late charters, by which the election of burgesses is limited contrary to the ancient custom, shall be considered null, and of no force. And likewise all magistrates who have been unjustly turned out, shall forthwith resume their former employments; as well as all the burgesses of England shall return again to their ancient prescriptions and charters.”

The lords spiritual and temporal, to the number of about ninety, and an assembly of all who had sitten in any of King

Charles's parliaments, with the lord mayor, aldermen, and fifty of the common council of London, solicited the Prince of Orange to take the administration of affairs, and to issue writs for a Convention Parliament in the usual manner.

**WILLIAM III.**  
**1689—1702.**

The Convention Parliament, when assembled, requested the Prince of Orange to retain the executive authority; and then proceeded to discuss the disposition of the crown. The commons resolved,—That King James II. having endeavoured to subvert the constitution of the kingdom, by breaking the original contract betwixt king and people; and, by the advice of jesuits, and other wicked persons, having violated the fundamental laws, and withdrawn himself out of the kingdom, has abdicated the government, and the throne is thereby vacant.

The Convention  
Parliament.

Hobbes has justly observed, that “if any interest or passion were concerned in disputing the theorems of geometry, different opinions would be maintained concerning them;” it therefore cannot excite surprise that the political parties entered upon a lengthened debate, in which constitutional principles and common sense were discarded, as to the words “abdicated” and “deserted.” But it was ultimately resolved, that William and Mary, Prince and Princess of Orange, be, and be declared King and Queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the crown and dignity of the said kingdoms and dominions, to them the said prince and princess, during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by, the said Prince of Orange, in the names of the said prince and princess, during their joint lives; and after their decease, the said crown and regal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess; for default of such issue, to the Princess Anne of Denmark, and the heirs of her body; and for the default of such issue, to the heirs of the body of the said Prince of Orange.

Settlement of the  
crown.

Such was the proper termination of that contest, which the House of Stuart had obstinately maintained against the liberties, and, of late, against the religion of England; or rather, of that far more ancient controversy between the crown and the people, which had never been wholly at rest since the reign of John; William III. being raised to the throne for

Principles under  
which William  
III. ascended the  
throne.

**WILLIAM III.** the sake of those liberties, by violating which his predecessor  
**1689—1702.** had forfeited it'.

## 2. *Declaration of Rights.*

The motive and the condition of the Act of Settlement, was the recognition by William of the "Declaration of Rights," which was presented to him before the two Houses of Parliament, in which it was declared,—

Suspension of laws.

That the pretended power of suspending laws, and the execution of laws, by regal authority, without consent of parliament, is illegal.

Royal dispensation.

That the pretended power of dispensing with laws by regal authority, as it hath been assumed and exercised of late, is illegal.

Court of high commission.

That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of the like nature, are illegal and pernicious.

Imposition of taxes.

That levying money for, or to the use of, the crown, by pretence of prerogative, without grant of parliament, for longer time, or in any other manner, than the same is, or shall be, granted, is illegal.

Right to petition the king.

That it is the right of the subjects to petition the king, and that all commitments or prosecutions for such petitions are illegal.

Keeping a standing army without consent of parliament.

That the raising or keeping a standing army within the kingdom in time of peace, unless it be with the consent of parliament, is against law.

That the subjects which are Protestants, may have arms for their defence, suitable to their conditions, and as allowed by law.

Election of members of parliament.

That election of members of parliament ought to be free.

Freedom of speech.

That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

Excessive punishments.

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Impanelling of jurors.

That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders.

That all grants and promises of fines and forfeitures of particular persons, before conviction, are illegal and void.

And that, for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

This declaration, with the settlement of the crown; were afterwards incorporated in a statute<sup>1</sup>, known as the "Bill of Rights," but amended by two important provisions,—

It being enacted, that all persons who shall hold communion with the Church of Rome, or shall marry a papist, shall be excluded, and for ever incapable to possess, inherit, or enjoy, the crown and government of this realm; and in all such cases, the people of these realms shall be absolved from their allegiance, and the crown shall descend to the next heir.

Instead of the indefinite language that had been used in the Declaration of Rights relative to the power of dispensation, it was enacted, that no dispensation by "non-obstante" to any statute should be allowed, without which our liberties would have rested upon a very insecure basis.

WILLIAM III.  
1689—1702.

Forfeitures before conviction, illegal.

Frequency of parliaments.

Bill of Rights.

Subject absolved from his allegiance to a Roman Catholic sovereign.

Dispensation by "non-obstante," illegal.

### 3. *Acts of Settlement.*

The settlement of the crown at the Revolution extended only to the descendants of William and Anne. Upon the death of the Duke of Gloucester, in 1700, it was determined, in order to destroy the hopes of the Jacobites, to make a new settlement of the crown on a Protestant line of princes.

By the Act of Settlement<sup>1</sup>, that is by the sovereign will of parliament, all prior claims of inheritance to the throne of these realms, save that of the issue of King William and the Princess Anne, were annulled, and given to the Princess Sophia, and the heirs of her body, being Protestants: thus destroying all notions of hereditary or imprescriptible right to the British crown, and making the people's choice the primary foundation of magistracy.

The Bill of Rights had omitted some important matters, and new abuses had called for new remedies. Eight articles were therefore inserted in the Act of Settlement, to take effect only from the commencement of the new limitation to the House of Hanover, and which were as follow:—

The people's choice, the primary foundation of magistracy.

Omissions in the Bill of Rights rectified.

<sup>1</sup> 1 William and Mary, sess. 2, c. 2.

<sup>1</sup> Stat. 12 & 13 William III. c. 2.

WILLIAM III.  
1689—1702.

The king must  
conform to the  
established  
religion.

The nation not  
obliged to go to  
war for domi-  
nions which do  
not belong to the  
crown.

Duties of the  
privy council.

Qualifications for  
a privy coun-  
ciller.

Holding an office  
of profit a disqua-  
lification from  
being a memb-  
er of the common

Judges' commis-  
sions to be ma-  
de "*quamdiu se  
bene gesserint.*"

1. That whosoever shall hereafter come to the possession of this crown, shall join in communion with the Church of England as by law established.

2. That in case the crown and imperial dignity of this realm shall hereafter come to any person not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England, without the consent of parliament.

3. That no person who shall hereafter come to the possession of this crown, shall go out of the dominions of England, Scotland, or Ireland, without consent of parliament<sup>2</sup>.

4. That from and after the time that the further limitation by this act shall take effect, all matters and things relating to the well governing of this kingdom, which are properly cognizable in the privy council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the privy council as shall advise and consent to the same.

5. That, after the said limitation shall take effect as afore-said, no person born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized, or made a denizen,—except such as are born of English parents), shall be capable to be of the privy council, or a member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments, from the crown to himself, or to any other or others in trust for him<sup>3</sup>.

6. That no person who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the House of Commons.

7. That after the said limitation shall take effect as afore-said, judges' commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but, upon the address of both Houses of Parliament, it may be lawful to remove them.

<sup>2</sup> This was repealed by Stat. 1 George I. c. 51.

<sup>3</sup> The Stat. 1 George I. Stat. 2, c. 4, enacts that no bill of naturalization shall be received without a clause disqualifying the party from sitting in parliament, "for the better preserving the said clause in the said Act entire and inviolate."

8. That no pardon under the great seal of England be pleadable to an impeachment by the commons in parliament.

The first three articles, and the fifth, originated in the mistrust which was entertained against the House of Hanover, and the employment of foreigners.

With respect to the fourth article, it should be observed that, according to the original constitution of our monarchy, the king had his privy council composed of the great officers of state, and of such others as he should summon to it, bound by an oath of fidelity and secrecy, by whom all affairs of weight, whether as to domestic or exterior policy, were debated for the most part in his presence, and determined, agreeably to his pleasure, by the vote of the major part.

As early as the reign of Charles I. the privy council, even as it was then constituted, was too numerous for the practical administration of supreme power, and a select portion of that body, were, under the name of "cabinet council," selected as more confidential advisers of the crown, and were previously consulted as to the policy to be pursued respecting such measures as were to come under discussion.

During the reign of William, this distinction of the cabinet from the privy council, and the exclusion of the latter from business of state became more fully established. "The method is this," says a member in debate: "things are concerted in the cabinet, and then brought to the council; such a thing is resolved in the cabinet, and brought and put on them for their assent, without showing any of the reasons. This has not been the method of England. If this method be, you will never know who gives advice."

It was endeavoured to restore the ancient principle by the fourth provision in the Act of Settlement, that, after the accession of the House of Hanover, all resolutions as to government should be debated in the privy council, and signed by those present. But, from some unknown motives, this clause never came into operation, being repealed by the Stat. 4 Anne, c. 8; 6 Anne, c. 7.

The plans of government are now discussed and determined in a "cabinet council," formed from the privy council; but the "cabinet" itself has no legal existence, and if a "cabinet minister" were to give improper councils to his sovereign,

WILLIAM III.  
1689—1702.

Royal pardon  
not to be pleaded  
to impeach-  
ments.

Origin of the first  
three and fifth  
articles.

The fourth  
article.

Distinction of  
the cabinet from  
the privy coun-  
cil.

No bill of im-  
peachment can  
be framed against  
a "cabinet  
councillor."

**WILLIAM III.  
1689—1702.**

unless a positive act of participation could be proved, or that he has committed himself by seal or signature, there is no law by which articles of impeachment could be drawn against him for sitting as a "cabinet minister," and he would not be responsible as a privy councillor, because the mere fact of belonging to a body, would not be sufficient to assume a guilty responsibility<sup>5</sup>.

The sixth article originated from the continued corruption of parliament.

Respecting the sixth article, it originated from the continued corruption of parliament, the reigning administration stifling the "patriotism" of its opponents by official appointments, and by bribes, which were taken from the "secret service money"; and if these means had not been adopted, it is very questionable whether William would have been enabled to have maintained his position.

Exclusion from the commons in consequence of employment.

The opposition were desirous of reducing this influence, and the first instance of exclusion from the House of Commons, in consequence of employment, occurs in 1694, when, on the formation of a new board of revenue, for managing the stamp duties, its members were disqualified from having seats in the House<sup>6</sup>:—and by Stat. 11 & 12 William III. c. 2, s. 150, a similar disability was extended to the commissioners, and some other officers of excise.

It was soon perceived that the clause excluding all official personages from the House, was highly impracticable; and a repeal of the article took place in 1706, the commons being still determined to preserve the principle of limitation as to the number of placemen that should be capacitated.

"Act of Security."

The House of Commons introduced into the "Act of Security" a clause enumerating various persons who should be eligible to parliament; the principal officers of state, the commissioners of treasury and admiralty, and a limited number of other placemen; this was successfully objected to by the lords, but two most important provisions were established,

Acceptance of office under the crown.

First, that every member of the House of Commons, accepting an office under the crown, except a higher commission in the army, shall vacate his seat, and a new writ shall issue.

<sup>5</sup> 11 Somers' Tracts, 276.

<sup>6</sup> 5 Parl. Hist. 807, 840, 841, 881, 900, 911, 933. Com. Journ. March 12, 1694-5.

<sup>7</sup> 3 Hallam's Const. Hist. 257, 258.

SECONDLY, persons holding offices created since the 25th of October, 1705, were incapacitated from being elected, or re-elected members of parliament. They excluded at the same time all such as held pensions during the pleasure of the crown; and, to check the multiplication of placemen, enacted, that no greater number of commissioners should be appointed to execute any office, than had been employed in its execution at some time before that parliament<sup>8</sup>.

It is impossible to question the policy of these enactments, for, as Algernon Sidney observes, "Men are naturally prone to corruption; and if he, whose will and interest it is to corrupt them, be furnished with the means, he will never fail to do it. Power, honours, riches, and the pleasures that attend them, are the baits by which men are drawn to prefer a personal interest before the public good; and the number of those who covet them is so great, that he who abounds in them will be able to gain so many to his service as shall be sufficient to subdue the rest. It is hard to find a tyranny in the world that has not been introduced in this way:"—in truth, he who has tasted the sweets of dishonest and clandestine lucre would, in the words of the poet, be no more capable afterwards of abstaining from it, than a dog from his greasy offal.

The Act of Settlement secured the independence of the judges by law, and confirmed their salaries; and no judge can be dismissed from office, except in consequence of a conviction for some offence, or the address of both Houses of parliament<sup>9</sup>; by which salutary enactment the judges are rendered independent of the crown.

Louis XIV. having acknowledged the son of James as king of England, the most unequivocal renunciation of hereditary right, and support of the principles of the Revolution, became requisite; accordingly, the pretended king was attainted of high treason<sup>10</sup>. It was made high treason to correspond with him, or remit money for his service; and an oath was required to be taken, not only by all civil officers, but by all

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1689—1702.

Non-eligibility.  
of members of  
parliament.

Men are natu-  
rally prone to  
corruption.

Independence of  
the judges se-  
cured by the Act  
of Settlement.

Attainder of the  
"Pretender."

<sup>8</sup> Stat. 4 Anne, c. 8; 6 Anne, c. 7.

<sup>9</sup> Although the commissions of William appointing the judges, were "*quamdiu se bene gesserint*," yet he refused his assent, in 1692, to a bill that had passed both Houses, securing the independence of the judges by law, and confirming their salaries:—because, as Burnet (p. 86) says, it was represented to the king by some of the judges themselves, that it was not fit they should be out of all dependance on the court.

<sup>10</sup> Stat. 13 William III. c. 3.



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1689-1702.

Oath of abjuration.

The non-jurors.

ecclesiastics, members of the universities, and schoolmasters, acknowledging "William as lawful and rightful king," and denying any right or title in the pretended Prince of Wales<sup>11</sup>.

At the Revolution, the oath of allegiance differed from that which had been in use for six hundred years<sup>12</sup>, the subject being only required, that "he would be faithful and bear true allegiance to the king," without mentioning "his heirs," or specifying in what that allegiance consisted.

Eight bishops<sup>13</sup>, about four hundred of the other clergy, for which they were very justly deposed, and the dissenting congregations, refused to transfer their allegiance from James II., upon the ground that he remained their lawful sovereign, notwithstanding the enactments of the legislature, and from whence arose the denomination of non-jurors.

The non-jurors considered the deposed prelates as the lawful bishops of their respective sees, and the new prelates as intruders. The former proceeded to found a new episcopal church, differing in some religious tenets and rites from the Anglican church; but this faction, although numerous at first, very soon dwindled into contempt and oblivion<sup>14</sup>.

This was a wicked attempt by men, who were far from being considered the most eminent for their learning and capacities, to set up the sacerdotal order above all civil power, and whose subsequent conduct was that of disloyal subjects. This schism might, from the strength of the presbyterians and papists, have destroyed the supremacy of the English Catholic church, by creating in it two distinct parties, and without the sacrifice of any religious principle:—because the authority by which every bishop or priest acts, is one which is derived by succession from the apostles, each succeeding generation communicating to the next the authority under which they themselves had been acting: and the division of the country into dioceses and parishes is a civil

The deposed prelates considered as the lawful bishops of their respective sees.

The authority by which every bishop or priest acts, is one which is derived, by succession, from the apostles.

<sup>11</sup> Stat. 13 William III. c. 6.

<sup>12</sup> The ancient oath contained a promise "to be true and faithful to the king and his heirs, and truth and faith to bear, of life, limb, and terrene honour, and not to know or hear of any ill or damage intended, without defending him therefrom."

<sup>13</sup> The non-juring bishops were Sancroft; Lloyd, Norwich; Turner, Ely; Frampton, Gloucester; White, Peterborough; Kenn, Bath and Wells. These were ejected. Lake of Chichester, and Thomas of Worcester, had died in the mean time. 1 D'Oyley's Sancroft, 447. 2 Short's Church Hist. 370.

<sup>14</sup> 3 Butler's Hist. Rom. Cath. 134.

arrangement which regulates the place where the individual shall exercise his ministry, but the civil power neither confers the ministerial authority, nor can alter it.

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When, therefore, the civil authority deprived these non-juring bishops of their temporal jurisdictions, it could not divest them of the sacred office to which they had been called<sup>15</sup>; and thus the temporal and spiritual authorities were in opposition, and, if the people had not experienced the wretchedness of republican and church tyranny, a civil war would have been the fatal result.

The Church of England became, at the Revolution, an authorized and paid establishment, supported by government, but rendered incapable of persecution;—and its duties are to guard the spiritual concerns of the nation, by making us know our relative duties to God and our neighbour.

The Church of England an authorized and paid establishment.

#### 4. *Municipal Institutions.*

The letters issued by the Convention Parliament, contained a clause which was not in the resolutions of the House, nor in the address to the Prince of Orange, “that the elections should be made by such persons only, as, according to the ancient laws and customs, of right, ought to choose members for parliament;” and the direction of the letters was, “To the chief magistrate, or such others who had right to make return of members, according to the ancient usage, before the seizure or surrender of charters, made in the time of Charles II.”

Letters issued by the Convention Parliament.

The professions of the Prince of Orange, that the burgesses of England should return again to their ancient prescriptions and charters, united with the patriotism of the Convention Parliament, naturally begat hopes that all traces of the violent and unconstitutional acts relative to borough rights, which had arisen in the preceding reigns, would have been effaced,—so far from it, they received the stamp of legislative confirmation;—and it is from the abuses that so arose, and were so confirmed, that the nation have, until the “Reform Act” and the “Municipal Corporation Act,” so bitterly complained.

Confirmation of municipal abuses.

A considerable body of the landed proprietors, and other equally influential persons in cities and boroughs, preferred incurring positive, but known abuses, rather than incur the

Protection of “select bodies.”

<sup>15</sup> 2 Short's Church Hist. 373, 374.

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The friends of  
pure constitu-  
tional liberty  
have never been  
in office.

peril of uncertain change for the amelioration of such abuses: the Whigs coincided in supporting such opinions, because their chief strength consisted in the protection of the select bodies, and the usurped rights of the non-residents; therefore the constitutional franchises of the nation were *sacrificed* to selfishness, and for the retention of power to a political party; in truth, it is a remarkable circumstance, that the "friends of pure constitutional liberty" have never been in office,—for although all parties have been in power, all their measures have had only one tendency, viz., to retain office, and keep their opponents out, with the smallest possible loss of influence to themselves: and so it was in Rome,—even in the senate, Octavius had a party, Antony had a party, but the commonwealth had none; in fact, the war-whoop of "patriotism" is in the political, like "charity" in the religious system,—a cloak to hide a multitude of sins.

William III.  
granted the  
smallest number  
of charters of  
any of his pre-  
decessors.

William III. granted the smallest number of charters of any of his predecessors, from the time of King John. They did not, as appears from the Patent Rolls, exceed fourteen in number, viz., Fowey, London, Ludlow, Nottingham, Plympton, Warwick, Colchester, Dunwich, Malnisbury, Eye, Hereford, Runsey, Tewkesbury, and Deal.

The case of Poole.

The first case in which the Convention Parliament had an opportunity of exemplifying the sincerity of their patriotism, was that of "Poole;" and the essential question was, who were the burgesses?—whether the right of election was in the mayor and burgesses only, or in the mayor, burgesses, and commonalty who paid scot and lot.

The effect of the  
decision.

The committee was composed of the following constitutional lawyers and statesmen, viz., Sir Richard Onslow, Sir George Treby, Colonel Sidney, Mr. Windham, Sir Robert Sawyer, Mr. Pollexfen, Mr. Godolphin, Mr. Hampden, Major Wildman, Mr. St. John, and many others equally distinguished; and the result of their investigation was, the affirming the elective franchise "in the mayor, burgesses, and commonalty paying scot and lot;" but the House itself, which had not inspected a single document, or heard the testimony of a single witness without condescending to afford a constitutional or plausible reason for disturbing the decision, but having only in view their political intrigues, to further which they were interested in supporting select bodies and non-residents, negatived the decision of the committee, and affirmed the right in

the "mayor and burgesses:" and the effect of such decision was this, that the next return which was made from "Poole" assumes to have been made by the *incorporated body*,—emphatically so describing themselves,—as if the determination of the House had been understood to give the right of election to the corporation.

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The burgesses of Dunwich were as effectually deprived of their constitutional rights by the Convention Parliament allowing the rights of the "non-residents," as they could have been by any of the Stuart charters. Thus, in 1670, no less than five hundred non-resident freemen were made,—forty-two of them at an ale-house,—at a period when there were not above forty residents; so that the responsible inhabitants of the borough had no essential voice in the election of those who called themselves their representatives<sup>10</sup>.

Case of Dun-  
wich.

In 1695 the question for the decision of the committee was, whether the elective franchise was exclusively vested in the burgesses inhabiting, or was likewise in the freemen who lived out of the borough, commonly called "out-sitters?" But the committee, against evidence and common sense, admitted the rights of the freemen,—that is, recognizing a class of persons who were ~~not~~ the grantees of the charters, because they were "burgesses," that is, freemen inhabiting within, and respon-

The question for  
the decision of  
the committee.

<sup>10</sup> This system of political depravity was almost *universally* exercised by the corporations at subsequent periods of our history:—thus, in 1711, one hundred and fifty-five voters were made for Carlisle, forty-one of whom had received their freedom after the teste of the writ, and thirty-two others immediately previous to the election, (M. & S. Hist. Boroughs, 2132):—in 1716 many persons were admitted in Haverfordwest to their freedom, a short time before the election, at clandestine times, and in unusual places, the mayor declaring at a public-house, he would "make as many new burgesses as would serve his turn," (ibid. 1763):—in 1788 the mayor of Colchester corruptly adjourned the poll, for the purpose of granting the freedom to several persons, whom he afterwards suffered to vote, (ibid. 1964):—and in Launceston the corporation agreed not to admit any freeman except of their own party, and to swear those they admitted, never to be against the mayor and aldermen, (ibid. 2007,) et etiam 1879, 1886, 1960, 2231.

As to the purity of burgage tenure, East-Grinstead, in 1803, will afford an illustration; it appearing in evidence, that none of the voters had ever paid any quit-rents for their burgages, nor the land-tax, and that the houses were assessed in the names of the persons from whom the titles were derived, and who were also at the expense of maintaining and repairing the buildings. No consideration was paid for the deeds, but the grantees, when they accepted the conveyances, signed a declaration of trust, as trustees for the grantor. None of the voters had possession of these deeds, but they were brought in a bag to the place of election by the agents of the grantors, and carried back by them in the same manner, (ibid. 1865).

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sible for the burdens of the borough,—but the freemen were persons residing without or within the borough, but not contributing to its burdens; in fact, being a freeman was only a qualification precedent for burgess-ship.

Origin of conflicting corporate rights.

But the confusion respecting these terms has arisen from the agreements of the contending parties: thus, in Dunwich, in 1691, on an election petition, the term “burgess” was omitted; and it was agreed on both sides that the question was, whether the right was “in the freemen resident only, or in the freemen generally, whether resident or out-sitters?” and in other boroughs such agreements have been held by committees of the House of Commons, after a very short interval of time, to vest an absolute and exclusive right in such acknowledged class:—thus, in 1690, in the case of Thetford, the right was taken to be in the “select body,” upon the agreement of the parties; and so likewise in Salisbury and other places.

Municipal abuse, occasioned by committees of the House of Commons.

These abuses in our municipal institutions may be chiefly ascribed to those most incompetent and expensive of all tribunals,—“Committees of the House of Commons,”—from their supposing that the privileges and liberties of boroughs differed from each other; their permitting the grossest usurpations to be respected as prescriptive rights, as in the cases of “select bodies” and “non-residents;” their putting a construction on particular words in charters, without regarding their spirit; their assuming that boroughs were created for any other purpose than for municipal police; and lastly, their allowing their decisions to be actuated by the profligacy of faction and selfish interests, united with an utter destitution of every principle founded upon equity, law, or common sense.

The nearer we approach to individual responsibility, the nearer will be its approach to perfection.

The nearer we approach to individual responsibility in the executive or administrative, the nearer will be its approach to perfection: hence these constitutional defects arose from the want of individual responsibility,—for bodies of men, in their aggregate capacities, invariably perpetrate acts of which they would have scorned or trembled to be guilty in their individual characters.

The cause of justice being so purely administered.

The reason that justice is so impartially administered in the superior courts of common law, arises from the individual and paid responsibility of the judges, and the public delivery of their judgments: if, for instance, instead of fifteen judges,

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divided into three different courts, there was only one court composed of fifty judges, it would instantly become a mere party tribunal, and its judgments would be tainted with the basest alloy,—in fact, it would be a prototype of a committee of the House of Commons, which although composed of men of the highest honour as individuals, yet were their judgments always received with universal dissatisfaction; and no litigant party ever considered their redress or punishment of his wrongs as founded on the pure principles of justice.

### 5. *Act of Toleration.*

When a political junto is so much broken and reduced as to be no longer formidable, prudence seems to require that its members should not be pointed out by invidious distinctions, but that by gentle treatment they should be induced to lay aside their peculiar principles and opinions. But when the individuals of an unsuccessful party are still possessed of so much power, as to afford the prospect of rising to superiority in the state, it is vain to expect that their attachment will be secured by marks of confidence and favour. Hope co-operates with resentment, to keep alive the spirit of opposition, and the participation of honours and emoluments is only furnishing them with weapons for the destruction of their political enemies:—and it was upon these principles that the Act of Uniformity had been enacted, and that the Act of Toleration was now framed.

Necessity for the enactment of severe laws, where the opposition is formidable.

When the Test Law was enacted, it was the intention of the House of Commons to relax the severities of the “Act of Uniformity,” in favour of such ministers as might be induced to conform, by granting an indulgence of worship to those who should persist in their separation. Upon the completion of the new settlement, it was determined, with the apparent concurrence of the church, to grant an indulgence to separate conventicles, and at the same time, by enlarging the terms of conformity, to bring back those whose differences were not irreconcilable, within the pale of the Anglican communion<sup>1</sup>.

Principles embodied in the Test Law.

To effectuate such views, the “Act of Toleration” was passed, which exempts from the penalties of existing statutes against separate conventicles, or absence from the established

Provisions in the Act of Toleration.

<sup>1</sup> 3 Hallam's Const. Hist. 231. 5 Parl. Hist. 184, 196, 212, 216. Kennet's Compl. Hist. 557, 558.

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worship, such as should take the oath of allegiance, and subscribe the declaration against popery,<sup>2</sup> and such ministers of separate congregations as should subscribe the Thirty-nine Articles of the Church of England, except three, and part of a fourth. It gives also indulgence to Quakers without this condition. Meeting-houses are required to be registered, and are protected from insult by a penalty. No part of this toleration is extended to papists, or to such as deny the Trinity.

Stat. 11 & 12  
William III. c. 2.

The members of the Anglican church having ascertained that William had made promises to some of his allies, that he would relax the penal laws, was one of the causes which rendered him unpopular<sup>3</sup>. After the peace of Ryswick, many priests came over for the dissemination of treason, and thus induced the enactment of 11 & 12 William III. c. 2<sup>4</sup>, which, after offering a reward of 100*l.* to any informer against a priest exercising his functions, enacts and adjudges, for such an offence, the penalty of perpetual imprisonment. It requires every person educated in the popish religion, or professing the same, within six months after he shall attain the age of eighteen years, to take the oaths of allegiance and supremacy, and subscribe the declaration set down in the act of Charles II. against transubstantiation, and the worship of saints; in default of which he is incapacitated, not only from purchasing, but from inheriting or taking lands under any devise or limitation; and the next of kin, being a Protestant, was to enjoy such lands during his life<sup>5</sup>.

The object of this  
statute defeated.

Although the object of this statute was to expel the Roman Catholic proprietors of land, by rendering it necessary for them to sell their estate; its unjust severity was itself an antidote. The Roman Catholic landholders neither renounced their religion, nor abandoned their inheritances:—the judges put such a construction upon the clause of forfeiture as eluded its efficacy; so that there were scarce any instances of a loss of property under this law. But the Roman Catholics, from their religion and their treasonable designs against the state, were, during the greater part of the eighteenth century, considered as a proscribed caste<sup>6</sup>.

<sup>2</sup> 4 Burnet, 409.

<sup>3</sup> 6 Parl. Hist. 514.

<sup>4</sup> This statute was repealed in 1779.

<sup>5</sup> 3 Hallam's Const. Hist. 242, 243.    <sup>6</sup> 2 Butler's Mem. of Catholics, 64.  
3 Butler's Hist. Roman Catholics, 137.

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### 6. *Settlement of the Revenue.*

There was no circumstance, which has contributed so much to the power of the House of Commons, as their "appropriation of the supplies," by which no administration can possibly subsist without its concurrence; nor can the session of parliament be intermitted for an entire year, without leaving both the naval and military force of the kingdom unprovided for. It had been generally adopted in the reign of Charles II.; but, from the Revolution, it has been invariably practised, and which prevents the revenue from being embezzled and misapplied.

Appropriation of supplies, the best corrective of abuse.

The principle adopted was, that the king's regular and domestic expenses should be determined by a fixed annual sum, distinct from the other departments of the public service, and all to terminate with his life<sup>1</sup>; accordingly, since this period, the Commons have appropriated the yearly supplies to certain specified services; and an account of the application has been constantly submitted to both Houses, at the next session.

Domestic expenses of the king determined by a fixed annual sum.

The lords of the treasury, by a clause annually repeated in the Appropriation Act of every session, are forbidden, under severe penalties, to order, by their warrant, any moneys in the exchequer, so appropriated, to be issued for any other service, and the officers of the exchequer to obey any such warrant.

Restrictions on the lords of the treasury.

In time of war, or in circumstances that may induce war, it has not been very uncommon to deviate a little from the rule of appropriation, by a grant of considerable sums on a vote of credit, which the crown is thus enabled to apply at its discretion, during the recess of parliament, but the ministers of the crown are responsible to parliament for its due application<sup>2</sup>.

Vote of credit.

The commons also voted that a constant revenue of 1,200,000*l.* should be established for the support of the crown in time of peace, 600,000*l.* of which was to be appropriated to the king's civil list, the remainder to the public service of government. The principle of these enactments being that they divided and separated from the crown, not the control

Settlement of the civil list.

<sup>1</sup> 5 Parl. Hist. 193. 3 Hallam's Const. 158 et seq.

<sup>2</sup> 1 Hargrave's Juridical Arguments, 394. 3 Hatsell's Preced. 80 et alibi.



WILLIAM III. and direction, but the payment of all the great and efficient  
1689—1702. services of the country.

### 7. *Triennial Bill.*

The country had experienced the mischievous consequences which had arisen from the "Long Parliament" of Charles II., and to provide against their recurrence, a bill was introduced for "triennial parliaments," in 1689, but it was lost by a prorogation; a similar measure passed by both Houses, in 1693, but to which the king refused his assent<sup>1</sup>; but, in 1694, this important measure became a statute, by which it was enacted, that a parliament should be held once in three years at least; that no parliament should continue longer than three years at farthest, to be accounted from the first day of the first session<sup>2</sup>; but by 1 George I. Stat. 2, c. 38, parliaments are to last for seven years, unless sooner dissolved.

Annual assembly  
of parliament  
rendered re-  
quisite.

The annual assembly of parliament is however rendered necessary, in the first place, by the strict appropriation of the revenue according to votes of supply; and, secondly, by passing the Mutiny Bill, under which the army is held together, and subjected to military discipline, for a short time, seldom or never exceeding twelve months.

Securities against  
military power.

These are the two effectual securities against military power; that no pay can be issued to the troops without a previous authorization by the commons in a committee of supply, and by both Houses in an act of appropriation; and that no officer or soldier can be punished for disobedience, nor any court martial held, without the annual re-enactment of the Mutiny Bill<sup>3</sup>.

Unlawful to  
keep forces in  
time of peace,  
without consent  
of parliament.

Thus it is strictly true, that, if the king were not to summon parliament every year, his army would cease to have a

<sup>1</sup> In the reign of George III., the ancient revenue of the crown was resigned, and a clear annual income was voted by parliament for the civil list of the king, being for the support of his majesty's household, and also for defraying the expenses of certain civil servants, and was divided into certain classes, and an auditor appointed, but the principle of the civil government of the country being defrayed by the sovereign remained in force.

In the reign of William IV., and also under Victoria, the civil list was released from all charges for civil services, and was confined entirely to such charges as related to the dignity, ease, and personal comfort of the sovereign.

<sup>2</sup> 5 Parl. Hist. 754.

<sup>3</sup> Stat. 6 William and Mary, c. 2.

<sup>4</sup> 3 Hallam's Const. Hist. 202, 203.

legal existence; and the refusal of either House to concur in the Mutiny Bill would at once wrest the sword out of his grasp. By the Bill of Rights, it is declared unlawful to keep any forces, in time of peace, without consent of parliament,—and this consent, by an invariable and wholesome usage, is given only from year to year.

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### 8. *The Basis of the English Constitution.*

The principles embodied in the “Acts of Settlement and Bill of Rights,” are the basis of the English Constitution, and from which England has acquired her present power, opulence, and glory, united with that species of well-regulated liberty, which is unconnected with licentiousness, and unspotted by crime:—and, in conclusion, adopting the language of Bolingbroke, Let the illustrious and royal House, that hath been called to the government of these kingdoms, govern them till time shall be no more. But let the spirit, as well as the letter of the constitution, they are entrusted to preserve, be, as it ought to be, and as we promise ourselves, it will be, the sole rule of their government, and the sole support of their power; and whatever happens in the course of human contingencies, whatever be the fate of particular persons, of houses, or families, let the liberties of Great Britain be immortal.

The principles embodied in the “Acts of Settlement and Bill of Rights,” are the foundations of English prosperity and liberty.







